

REFERENCE TITLE: incompetent; nonrestorable defendants; involuntary commitment

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1412

Introduced by

Senators Driggs, Barto, Bradley; Representatives Borrelli, Brophy McGee, Fann; Senators Dalessandro, Farley; Representatives Boyer, Friese, Mesnard

AN ACT

AMENDING SECTIONS 13-4501, 13-4505, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4518; AMENDING SECTION 36-520, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 101; AMENDING SECTION 36-520, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 26; AMENDING SECTION 36-522, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1992, CHAPTER 301, SECTION 20; AMENDING SECTION 36-522, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 28; AMENDING SECTION 36-523, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 103; AMENDING SECTION 36-523, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 29; AMENDING SECTION 36-529, ARIZONA REVISED STATUTES; AMENDING SECTION 36-531, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 105; AMENDING SECTION 36-531, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 30; AMENDING SECTIONS 36-533, 36-534, 36-540 AND 36-540.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-540.03; AMENDING SECTION 36-541.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 113; AMENDING SECTION 36-541.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 33; AMENDING SECTION 36-543, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 114; AMENDING SECTION 36-543, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 195, SECTION 34; AMENDING SECTIONS 36-544, 36-546 AND 36-3701, ARIZONA REVISED STATUTES; RELATING TO INCOMPETENT AND NONRESTORABLE DEFENDANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4501, Arizona Revised Statutes, is amended to
3 read:

4 13-4501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Clinical liaison" means a mental health expert or any other
7 individual who has experience and training in mental health or developmental
8 disabilities and who is qualified and appointed by the court to aid in
9 coordinating the treatment or training of individuals who are found
10 incompetent to stand trial. If intellectual disability is an issue, the
11 clinical liaison shall be an expert in intellectual disabilities.

12 2. "DANGEROUS" MEANS, EXCEPT AS USED IN PARAGRAPH 6 OF THIS SECTION, A
13 THREAT TO PUBLIC SAFETY AND IS LIKELY, AS A RESULT OF A MENTAL ILLNESS,
14 DEFECT OR DISABILITY, TO COMMIT AN ACT OF VIOLENCE OR CAUSE SERIOUS PHYSICAL
15 INJURY TO ANOTHER PERSON.

16 ~~2-~~ 3. "Incompetent to stand trial" means that as a result of a mental
17 illness, defect or disability a defendant is unable to understand the nature
18 and object of the proceeding or to assist in the defendant's defense. In the
19 case of a person under eighteen years of age when the issue of competency is
20 raised, incompetent to stand trial also means a person who does not have
21 sufficient present ability to consult with the person's lawyer with a
22 reasonable degree of rational understanding or who does not have a rational
23 and factual understanding of the proceedings against the person. The
24 presence of a mental illness, defect or disability alone is not grounds for
25 finding a defendant incompetent to stand trial.

26 ~~3-~~ 4. "Mental health expert" means a physician who is licensed
27 pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed
28 pursuant to title 32, chapter 19.1 and who is:

- 29 (a) Familiar with this state's competency standards and statutes.
- 30 (b) Familiar with the treatment, training and restoration programs
31 that are available in this state.
- 32 (c) Certified by the court as meeting court developed guidelines using
33 recognized programs or standards.

34 ~~4-~~ 5. "Mental illness, defect or disability" means a psychiatric or
35 neurological disorder that is evidenced by behavioral or emotional symptoms,
36 including congenital mental conditions, conditions resulting from injury or
37 disease and developmental disabilities as defined in section 36-551.

38 ~~5-~~ 6. "Threat to public safety" means charged with the commission of
39 any of the following:

- 40 (a) A crime involving the discharge, use or threatening exhibition of
41 a deadly weapon or dangerous instrument or the infliction of physical injury
42 on another person.
- 43 (b) A dangerous crime against children pursuant to section 13-705.
- 44 (c) Two or more nondangerous felonies within a period of twenty-four
45 months.

1 Sec. 2. Section 13-4505, Arizona Revised Statutes, is amended to read:
2 13-4505. Appointment of experts; costs

3 A. If the court determines pursuant to section 13-4503 that reasonable
4 grounds exist for a competency examination, the court shall appoint two or
5 more mental health experts to examine the defendant, issue a report and, if
6 necessary, testify regarding the defendant's competency. The court, on its
7 own motion or ~~upon~~ ON motion of any party, may order that one of the mental
8 health experts appointed shall be a physician specializing in psychiatry and
9 licensed pursuant to title 32, chapter 13 or 17. The state and the
10 defendant, ~~upon~~ ON approval of the court, may stipulate to the appointment of
11 only one expert.

12 B. The court may order the defendant to submit to physical,
13 neurological or psychological examinations, if necessary, to adequately
14 determine the defendant's mental condition.

15 C. IF THE DEFENDANT IS CHARGED WITH A SEXUALLY VIOLENT OFFENSE AS
16 DEFINED IN SECTION 36-3701 AND THE COUNTY ATTORNEY REQUESTS, THE COURT MAY
17 ORDER A SCREENING OF THE DEFENDANT TO DETERMINE IF THE DEFENDANT IS A
18 SEXUALLY VIOLENT PERSON. ONE OF THE MENTAL HEALTH EXPERTS APPOINTED BY THE
19 COURT SHALL BE A COMPETENT PROFESSIONAL AS DEFINED IN SECTION 36-3701. IF
20 THAT EXPERT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO STAND TRIAL AND
21 NOT RESTORABLE TO COMPETENCY WITHIN TWENTY-ONE MONTHS, THE EXPERT SHALL
22 DETERMINE WHETHER THE DEFENDANT MAY BE A SEXUALLY VIOLENT PERSON.

23 ~~C.~~ D. The court shall order the defendant to pay the costs of the
24 court ordered examination, except that if the court finds the defendant is
25 indigent or otherwise unable to pay all or any part of the costs or if the
26 prosecution requested the examination, the court shall order the county to
27 pay the costs of the examination or, if the case is referred by a municipal
28 court judge, the court shall order the city to pay the costs of the
29 examination.

30 ~~D.~~ E. This section does not prohibit any party from retaining its own
31 expert to conduct any additional examinations at its own expense.

32 ~~E.~~ F. A person who is appointed as a mental health expert or clinical
33 liaison is entitled to immunity, except that the mental health expert or
34 clinical liaison may be liable for intentional, wanton or grossly negligent
35 acts that are done in the performance of the expert's or liaison's duties.

36 Sec. 3. Section 13-4509, Arizona Revised Statutes, is amended to read:
37 13-4509. Expert's report

38 A. An expert who is appointed pursuant to section 13-4505 shall submit
39 a written report of the examination to the court within ten working days
40 after the examination is completed. The report shall include at least the
41 following information:

- 42 1. The name of each mental health expert who examines the defendant.
- 43 2. A description of the nature, content, extent and results of the
44 examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO**
45 **ASSESS THE DEFENDANT'S PROPENSITY TO REOFFEND.**

1 3. The facts on which the findings are based.
2 4. An opinion as to the competency of the defendant.
3 B. If the mental health expert determines that the defendant is
4 incompetent to stand trial, the report shall also include the following
5 information:
6 1. The nature of the mental disease, defect or disability that is the
7 cause of the incompetency.
8 2. The defendant's prognosis.
9 3. THE NATURE OF THE MENTAL HEALTH DISORDER, DISEASE OR DEFECT OR OF
10 ANY PERSONALITY OR OTHER DISORDER THAT MAY AFFECT THE DEFENDANT'S PROPENSITY
11 TO REOFFEND.
12 ~~3.~~ 4. The most appropriate form and place of treatment in this state,
13 based on the defendant's therapeutic needs and potential threat to public
14 safety.
15 ~~4.~~ 5. Whether the defendant is incompetent to refuse treatment and
16 should be subject to involuntary treatment.
17 6. IF THE PROGNOSIS INCLUDES A DETERMINATION AS TO WHETHER THERE IS NO
18 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN
19 TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY,
20 WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS OR MAY BE A SEXUALLY
21 VIOLENT PERSON.
22 C. If the mental health examiner determines that the defendant is
23 currently competent by virtue of ongoing treatment with psychotropic
24 medication, the report shall address the necessity of continuing that
25 treatment and shall include a description of any limitations that the
26 medication may have on competency.
27 Sec. 4. Section 13-4515, Arizona Revised Statutes, is amended to read:
28 13-4515. Duration of order; excluded time calculation; notice
29 of dismissed charge or voided order; petitions
30 A. An order or combination of orders that is issued pursuant to
31 section 13-4512 or 13-4514 shall not be in effect for more than twenty-one
32 months or the maximum possible sentence the defendant could have received
33 pursuant to section 13-702, section 13-703, section 13-704, subsection A, B,
34 C, D or E, section 13-705, section 13-706, subsection A, section 13-708,
35 subsection D or section 13-751 or any section for which a specific sentence
36 is authorized, whichever is less. In making this determination the court
37 shall not consider the sentence enhancements under section 13-703 or 13-704
38 for prior convictions.
39 B. The court shall only consider the time a defendant actually spends
40 in a restoration to competency program when calculating the time requirements
41 pursuant to subsection A of this section.
42 C. The court shall notify the prosecutor, the defense attorney, the
43 medical supervisor and the treating facility if the charges against the
44 defendant are dismissed or if an order is voided by the court. No charges
45 shall be dismissed without a hearing ~~prior to~~ BEFORE the dismissal.

1 D. If a defendant is discharged or released on the expiration of an
2 order or orders issued pursuant to section 13-4512 or 13-4514, the medical
3 supervisor may file a petition stating that the defendant requires further
4 treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian
5 pursuant to title 14 OR INVOLUNTARY COMMITMENT BECAUSE THE DEFENDANT IS
6 DANGEROUS.

7 Sec. 5. Section 13-4517, Arizona Revised Statutes, is amended to read:
8 13-4517. Incompetent defendants; disposition

9 A. If the court finds that a defendant is incompetent to stand trial
10 and that there is no substantial probability that the defendant will regain
11 competency within twenty-one months after the date of the original finding of
12 incompetency, any party may request that the court:

13 1. Remand the defendant to the custody of the department of health
14 services for the institution of civil commitment proceedings pursuant to
15 title 36, chapter 5.

16 2. Appoint a guardian pursuant to title 14, chapter 5.

17 3. Release the defendant from custody and dismiss the charges against
18 the defendant without prejudice.

19 4. HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND
20 SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4518.

21 B. IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 1,
22 2 OR 4 OF THIS SECTION, THE COURT MAY ALSO ORDER AN ASSESSMENT OF THE
23 DEFENDANT'S ELIGIBILITY FOR PRIVATE INSURANCE OR PUBLIC BENEFITS THAT MAY BE
24 APPLIED TO THE EXPENSES OF THE DEFENDANT'S MEDICALLY NECESSARY MAINTENANCE
25 AND TREATMENT, INCLUDING SERVICES PURSUANT TO TITLE 36, CHAPTER 29,
26 STATE-ONLY BEHAVIORAL HEALTH SERVICES, TITLE XVIII SERVICES AND MEDICARE PART
27 D PRESCRIPTION DRUG BENEFITS, SUPPLEMENTAL SECURITY INCOME AND SUPPLEMENTAL
28 SECURITY DISABILITY INCOME.

29 C. THE COURT MAY RETAIN JURISDICTION OVER THE DEFENDANT THROUGHOUT THE
30 TIME NECESSARY TO DETERMINE THE DEFENDANT'S APPROPRIATE TREATMENT OPTIONS AND
31 TO IMPLEMENT THE COURT'S ORDERS.

32 D. IF THE COURT REMANDS THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT
33 OF HEALTH SERVICES FOR THE INSTITUTION OF CIVIL COMMITMENT PROCEEDINGS
34 PURSUANT TO TITLE 36, CHAPTER 5 AND THE COURT IS NOTIFIED THAT THE DEFENDANT
35 HAS NOT HAD A CIVIL COMMITMENT EVALUATION, THE COURT SHALL ORDER THE SHERIFF
36 TO TAKE THE DEFENDANT INTO CUSTODY SO THAT THE COURT MAY EXPLORE OTHER
37 OPTIONS CONSISTENT WITH THIS SECTION. IF THE DEFENDANT IS OUT OF CUSTODY,
38 THE COURT MAY ORDER THAT THE DEFENDANT BE TAKEN INTO CUSTODY FOR A
39 DISPOSITION PURSUANT TO THIS SECTION.

40 E. IF A MENTAL HEALTH EXPERT HAS DETERMINED THAT THE DEFENDANT MAY BE
41 A SEXUALLY VIOLENT PERSON, THE MENTAL HEALTH EXPERT SHALL PROVIDE THE REPORT
42 TO THE PROSECUTING AGENCY SO THAT THE PROSECUTING AGENCY MAY FILE A PETITION
43 PURSUANT TO SECTION 36-3702.

1 Sec. 6. Title 13, chapter 41, Arizona Revised Statutes, is amended by
2 adding section 13-4518, to read:

3 13-4518. Dangerous and incompetent defendants; commitment
4 hearing; disposition

5 A. IF AN INCOMPETENT DEFENDANT IS FOUND TO BE NOT RESTORABLE TO
6 COMPETENCY, THE STATE MAY REQUEST A HEARING TO DETERMINE IF THE DEFENDANT IS
7 DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED.

8 B. IF THERE HAS NOT BEEN A PREVIOUS DETERMINATION ON WHETHER THE
9 DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH
10 EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE
11 DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

12 C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE
13 SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS
14 DANGEROUS AND THAT THE DEFENDANT COMMITTED THE CHARGED OFFENSE. IF THE COURT
15 DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT SHALL PROCEED PURSUANT TO
16 SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

17 D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL
18 ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY
19 LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON
20 ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE
21 EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER
22 COMPETENT OR NONDANGEROUS.

23 E. AFTER THE ENTRY OF A COMMITMENT ORDER, THE DEFENDANT'S TREATMENT
24 SUPERVISOR SHALL SUBMIT A REPORT TO THE COURT EVERY YEAR THAT INCLUDES THE
25 TREATMENT AND EDUCATION THAT THE DEFENDANT HAS RECEIVED, A PROGNOSIS FOR THE
26 DEFENDANT'S RESTORATION TO COMPETENCY AND WHETHER THE DEFENDANT REMAINS
27 DANGEROUS.

28 F. IF A TREATMENT SUPERVISOR SUBMITS A REPORT TO THE COURT PURSUANT TO
29 SUBSECTION E OF THIS SECTION INDICATING THAT THE DEFENDANT IS COMPETENT TO
30 STAND TRIAL OR IS NO LONGER DANGEROUS THE COURT SHALL HOLD A HEARING TO
31 DETERMINE WHETHER THE DEFENDANT IS COMPETENT OR IS NO LONGER DANGEROUS. IF
32 THE REPORT STATES THAT THE DEFENDANT IS NO LONGER DANGEROUS IN WHOLE OR IN
33 PART BECAUSE OF MEDICATION THAT THE DEFENDANT IS TAKING, THE REPORT MUST ALSO
34 INCLUDE THE LIKELIHOOD THAT THE DEFENDANT WILL CONTINUE TO TAKE THAT
35 MEDICATION AND COMPLY WITH ANY OUTPATIENT TREATMENT. THE COURT MAY ORDER AN
36 ADDITIONAL MENTAL HEALTH EXPERT TO PROVIDE AN OPINION ON THE DEFENDANT'S
37 COMPETENCE OR WHETHER THE DEFENDANT IS DANGEROUS. THE STATE MAY ALSO RETAIN
38 ITS OWN EXPERT FOR THIS PURPOSE.

39 G. AFTER A HEARING HELD PURSUANT TO SUBSECTION F OF THIS SECTION, IF
40 THE COURT FINDS THAT:

41 1. THE DEFENDANT'S COMPETENCY IS RESTORED, THE COURT SHALL ORDER THE
42 RESUMPTION OF CRIMINAL PROCEEDINGS.

43 2. THE DEFENDANT'S COMPETENCY HAS NOT BEEN RESTORED AND:

1 (a) THE DEFENDANT IS NOT DANGEROUS, THE COURT SHALL RELEASE THE
2 DEFENDANT FROM CUSTODY AND PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A,
3 PARAGRAPH 1, 2 OR 3.

4 (b) THE DEFENDANT IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE THE
5 DEFENDANT IS TAKING MEDICATION, THE COURT MAY RELEASE THE DEFENDANT ON THE
6 CONDITION THAT THE DEFENDANT CONTINUE TO TAKE THE MEDICATION AND SUBMIT TO
7 MONITORING AND TESTING.

8 (c) THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL REMAIN COMMITTED
9 TO THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE
10 FOLLOWING OCCURS:

11 (i) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

12 (ii) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

13 (iii) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE
14 THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN SENTENCED
15 PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER
16 OFFENSES.

17 H. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION,
18 THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT
19 TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR
20 PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S
21 MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND
22 STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND
23 REGIONAL BEHAVIORAL HEALTH CARE MONIES. THE DEPARTMENT MAY ACCEPT THESE
24 MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL
25 REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

26 Sec. 7. Section 36-520, Arizona Revised Statutes, as amended by Laws
27 2014, chapter 215, section 101, is amended to read:

28 36-520. Application for evaluation; definition

29 A. Any responsible individual may apply for a court-ordered evaluation
30 of a person who is alleged to be, as a result of a mental disorder, a danger
31 to self or to others, a person with a persistent or acute disability or a
32 grave disability and who is unwilling or unable to undergo a voluntary
33 evaluation. The application shall be made in the prescribed form and manner
34 as adopted by the deputy director.

35 B. The application for evaluation shall include the following data:

36 1. The name, and address if known, of the proposed patient for whom
37 evaluation is applied.

38 2. The age, date of birth, sex, race, marital status, occupation,
39 social security number, present location, dates and places of previous
40 hospitalizations, names and addresses of the guardian, spouse, next of kin
41 and significant other persons and other data that the deputy director may
42 require on the form to whatever extent that this data is known and is
43 applicable to the proposed patient.

1 3. ANY KNOWN CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING
2 WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL
3 PURSUANT TO SECTION 13-4510.

4 ~~3.~~ 4. The name, address and relationship of the person who is
5 applying for the evaluation.

6 ~~4.~~ 5. A statement that the proposed patient is believed to be, as a
7 result of a mental disorder, a danger to self or to others, ~~OR~~ a patient
8 with a persistent or acute disability or a grave disability and the facts on
9 which this statement is based.

10 ~~5.~~ 6. A statement that the applicant believes the proposed patient is
11 in need of supervision, care and treatment and the facts on which this
12 statement is based.

13 C. The application shall be signed and notarized.

14 D. The screening agency shall offer assistance to the applicant in
15 preparation of the application. Upon receipt of the application, the
16 screening agency shall act as prescribed in section 36-521 within forty-eight
17 hours of the filing of the application excluding weekends and holidays. If
18 the application is not acted upon within forty-eight hours, the reasons for
19 not acting promptly shall be reviewed by the director of the screening agency
20 or the director's designee.

21 E. If the applicant for the court-ordered evaluation presents the
22 person to be evaluated at the screening agency, the agency shall conduct a
23 prepetition screening examination. Except in the case of an emergency
24 evaluation, the person to be evaluated shall not be detained or forced to
25 undergo prepetition screening against the person's will.

26 F. If the applicant for the court-ordered evaluation does not present
27 the person to be evaluated at the screening agency, the agency shall conduct
28 the prepetition screening at the home of the person to be evaluated or any
29 other place the person to be evaluated is found. If prepetition screening is
30 not possible, the screening agency shall proceed as in section 36-521,
31 subsection B.

32 G. If a person is being treated by prayer or spiritual means alone in
33 accordance with the tenets and practices of a recognized church or religious
34 denomination by a duly accredited practitioner of that church or
35 denomination, such person may not be ordered evaluated, detained or
36 involuntarily treated unless the court has determined that the person is, as
37 a result of mental disorder, a danger to others or to self.

38 H. Court-ordered evaluation or treatment pursuant to this chapter
39 shall not operate to change the legal residence of a patient.

40 I. If the application is not acted upon because it has been determined
41 that the proposed patient does not need an evaluation, the agency after a
42 period of six months shall destroy the application and any other evidence of
43 the application.

44 J. For the purposes of this section, "person" includes a person who:

- 45 1. Is under eighteen years of age.

1 2. Has been transferred to the criminal division of the superior court
2 pursuant to section 8-327 or who has been charged with an offense pursuant to
3 section 13-501.

4 3. Is under the supervision of an adult probation department.

5 Sec. 8. Section 36-520, Arizona Revised Statutes, as amended by Laws
6 2015, chapter 195, section 26, is amended to read:

7 36-520. Application for evaluation; definition

8 A. Any responsible individual may apply for a court-ordered evaluation
9 of a person who is alleged to be, as a result of a mental disorder, a danger
10 to self or to others or a person with a persistent or acute disability or a
11 grave disability and who is unwilling or unable to undergo a voluntary
12 evaluation. The application shall be made in the prescribed form and manner
13 as adopted by the director.

14 B. The application for evaluation shall include the following data:

15 1. The name, and address if known, of the proposed patient for whom
16 evaluation is applied.

17 2. The age, date of birth, sex, race, marital status, occupation,
18 social security number, present location, dates and places of previous
19 hospitalizations, names and addresses of the guardian, spouse, next of kin
20 and significant other persons and other data that the director may require on
21 the form to whatever extent that this data is known and is applicable to the
22 proposed patient.

23 3. ANY KNOWN CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING
24 WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL
25 PURSUANT TO SECTION 13-4510.

26 ~~3-~~ 4. The name, address and relationship of the person who is
27 applying for the evaluation.

28 ~~4-~~ 5. A statement that the proposed patient is believed to be, as a
29 result of a mental disorder, a danger to self or to others or a patient with
30 a persistent or acute disability or a grave disability and the facts on which
31 this statement is based.

32 ~~5-~~ 6. A statement that the applicant believes the proposed patient is
33 in need of supervision, care and treatment and the facts on which this
34 statement is based.

35 C. The application shall be signed and notarized.

36 D. The screening agency shall offer assistance to the applicant in
37 preparation of the application. On receipt of the application, the screening
38 agency shall act as prescribed in section 36-521 within forty-eight hours of
39 the filing of the application excluding weekends and holidays. If the
40 application is not acted upon within forty-eight hours, the reasons for not
41 acting promptly shall be reviewed by the director of the screening agency or
42 the director's designee.

43 E. If the applicant for the court-ordered evaluation presents the
44 person to be evaluated at the screening agency, the agency shall conduct a
45 prepetition screening examination. Except in the case of an emergency

1 evaluation, the person to be evaluated shall not be detained or forced to
2 undergo prepetition screening against the person's will.

3 F. If the applicant for the court-ordered evaluation does not present
4 the person to be evaluated at the screening agency, the agency shall conduct
5 the prepetition screening at the home of the person to be evaluated or any
6 other place the person to be evaluated is found. If prepetition screening is
7 not possible, the screening agency shall proceed as in section 36-521,
8 subsection B.

9 G. If a person is being treated by prayer or spiritual means alone in
10 accordance with the tenets and practices of a recognized church or religious
11 denomination by a duly accredited practitioner of that church or
12 denomination, such person may not be ordered evaluated, detained or
13 involuntarily treated unless the court has determined that the person is, as
14 a result of mental disorder, a danger to others or to self.

15 H. Court-ordered evaluation or treatment pursuant to this chapter does
16 not operate to change the legal residence of a patient.

17 I. If the application is not acted on because it has been determined
18 that the proposed patient does not need an evaluation, the agency after a
19 period of six months shall destroy the application and any other evidence of
20 the application.

21 J. For the purposes of this section, "person" includes a person who:

22 1. Is under eighteen years of age.

23 2. Has been transferred to the criminal division of the superior court
24 pursuant to section 8-327 or who has been charged with an offense pursuant to
25 section 13-501.

26 3. Is under the supervision of an adult probation department.

27 Sec. 9. Section 36-522, Arizona Revised Statutes, as amended by Laws
28 1992, chapter 301, section 20, is amended to read:

29 36-522. Voluntary evaluation

30 A. **EXCEPT AS PROVIDED IN SECTION 36-534**, if the petition for
31 court-ordered evaluation is not filed because it has been determined that the
32 proposed patient will voluntarily receive an evaluation and is unlikely to
33 present a danger to self or others until the voluntary evaluation, the
34 evaluation agency provided for by the county, or selected by the proposed
35 patient, shall be immediately notified and shall provide evaluation of the
36 proposed patient at a scheduled time and place within five days of the
37 notice. The voluntary evaluation may be on an inpatient or outpatient basis.

38 B. Voluntary inpatient evaluation is subject to ~~the provisions of~~
39 article 3 of this chapter.

40 C. Voluntary outpatient evaluation shall conform to the requirements
41 of section 36-530, subsection D and section 36-531, subsections B, C and D
42 and shall proceed only after the person to be evaluated has given consent to
43 be evaluated by signing a form prescribed by the deputy director ~~which~~ **THAT**
44 includes information to the proposed patient that the patient-physician
45 privilege does not apply and that the evaluation may result in a petition for

1 the person to undergo court-ordered treatment or for guardianship. Voluntary
2 evaluation may be carried out only if chosen by the patient during the course
3 of a prepetition screening after application for evaluation has been made.

4 Sec. 10. Section 36-522, Arizona Revised Statutes, as amended by Laws
5 2015, chapter 195, section 28, is amended to read:

6 36-522. Voluntary evaluation

7 A. EXCEPT AS PROVIDED IN SECTION 36-534, if the petition for
8 court-ordered evaluation is not filed because it has been determined that the
9 proposed patient will voluntarily receive an evaluation and is unlikely to
10 present a danger to self or others until the voluntary evaluation, the
11 evaluation agency provided for by the county, or selected by the proposed
12 patient, shall be immediately notified and shall provide evaluation of the
13 proposed patient at a scheduled time and place within five days of the
14 notice. The voluntary evaluation may be on an inpatient or outpatient basis.

15 B. Voluntary inpatient evaluation is subject to article 3 of this
16 chapter.

17 C. Voluntary outpatient evaluation shall conform to the requirements
18 of section 36-530, subsection D and section 36-531, subsections B, C and D
19 and shall proceed only after the person to be evaluated has given consent to
20 be evaluated by signing a form prescribed by the director that includes
21 information to the proposed patient that the patient-physician privilege does
22 not apply and that the evaluation may result in a petition for the person to
23 undergo court-ordered treatment or for guardianship. Voluntary evaluation
24 may be carried out only if chosen by the patient during the course of a
25 prepetition screening after an application for evaluation has been made.

26 Sec. 11. Section 36-523, Arizona Revised Statutes, as amended by Laws
27 2014, chapter 215, section 103, is amended to read:

28 36-523. Petition for evaluation

29 A. The petition for evaluation shall contain the following:

30 1. The name, address and interest in the case of the individual who
31 applied for the petition.

32 2. The name, and address if known, of the proposed patient for whom
33 evaluation is petitioned.

34 3. The present whereabouts of the proposed patient, if known.

35 4. A statement alleging that there is reasonable cause to believe that
36 the proposed patient has a mental disorder and is as a result a danger to
37 self or others, has a persistent or acute disability or a grave disability
38 and is unwilling or unable to undergo voluntary evaluation.

39 5. A summary of the facts ~~which~~ THAT support the allegations that the
40 proposed patient is dangerous, has a persistent or acute disability or a
41 grave disability and is unwilling or unable to be voluntarily evaluated
42 including the facts ~~which~~ THAT brought the proposed patient to the screening
43 agency's attention.

1 6. ANY KNOWN CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING
2 WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL
3 PURSUANT TO SECTION 13-4510.

4 ~~6-~~ 7. Other information that the deputy director, with the approval
5 of the director, by rule or the court by rule or order may require.

6 B. The petition shall request that the court issue an order requiring
7 that the proposed patient be given an evaluation and shall advise the court
8 of both of the following:

9 1. That the opinion of the petitioner is either that the proposed
10 patient is or is not in such a condition that without immediate or continuing
11 hospitalization he is likely to suffer serious physical harm or further
12 deterioration or inflict serious physical harm ~~upon~~ ON another person.

13 2. If the opinion of the petitioner is that the proposed patient is
14 not in the condition described in paragraph 1 of this subsection, that the
15 opinion of the petitioner is either that the evaluation should or should not
16 take place on an outpatient basis.

17 C. The petition for evaluation shall be accompanied by the application
18 for evaluation, by the recommendation of the county attorney pursuant to
19 section 36-521 and by a prepetition screening report, unless such documents
20 have not been prepared under a provision of law or in accordance with an
21 order of the court. The petition for evaluation shall also be accompanied by
22 a copy of the application for emergency admission if one exists.

23 D. A petition and other forms required in a court may be filed only by
24 the screening agency which has prepared the petition.

25 E. If the petition is not filed because it has been determined that
26 the person does not need an evaluation, the agency after a period of six
27 months shall destroy the petition and the various reports annexed to the
28 petition as required by this section.

29 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
30 THE PERSON DOES NOT NEED AN EVALUATION AND THE PERSON HAS BEEN FOUND BY A
31 COURT TO BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE
32 PERSON SHALL BE REMANDED FOR A DISPOSITION PURSUANT TO SECTION 13-4517. IF
33 THE PERSON IS OUT OF CUSTODY, THE COURT MAY ORDER THAT THE PERSON BE TAKEN
34 INTO CUSTODY FOR A DISPOSITION PURSUANT TO THIS SECTION.

35 Sec. 12. Section 36-523, Arizona Revised Statutes, as amended by Laws
36 2015, chapter 195, section 29, is amended to read:

37 36-523. Petition for evaluation

38 A. The petition for evaluation shall contain the following:

39 1. The name, address and interest in the case of the individual who
40 applied for the petition.

41 2. The name, and address if known, of the proposed patient for whom
42 evaluation is petitioned.

43 3. The present whereabouts of the proposed patient, if known.

44 4. A statement alleging that there is reasonable cause to believe that
45 the proposed patient has a mental disorder and is as a result a danger to

1 self or others, has a persistent or acute disability or a grave disability
2 and is unwilling or unable to undergo voluntary evaluation.

3 5. A summary of the facts that support the allegations that the
4 proposed patient is dangerous, has a persistent or acute disability or a
5 grave disability and is unwilling or unable to be voluntarily evaluated,
6 including the facts that brought the proposed patient to the screening
7 agency's attention.

8 6. ANY KNOWN CRIMINAL HISTORY OF THE PROPOSED PATIENT, INCLUDING
9 WHETHER THE PROPOSED PATIENT HAS EVER BEEN FOUND INCOMPETENT TO STAND TRIAL
10 PURSUANT TO SECTION 13-4510.

11 ~~6-~~ 7. Other information that the director by rule or the court by
12 rule or order may require.

13 B. The petition shall request that the court issue an order requiring
14 that the proposed patient be given an evaluation and shall advise the court
15 of both of the following:

16 1. That the opinion of the petitioner is either that the proposed
17 patient is or is not in such a condition that without immediate or continuing
18 hospitalization the patient is likely to suffer serious physical harm or
19 further deterioration or inflict serious physical harm on another person.

20 2. If the opinion of the petitioner is that the proposed patient is
21 not in the condition described in paragraph 1 of this subsection, that the
22 opinion of the petitioner is either that the evaluation should or should not
23 take place on an outpatient basis.

24 C. The petition for evaluation shall be accompanied by the application
25 for evaluation, by the recommendation of the county attorney pursuant to
26 section 36-521 and by a prepetition screening report, unless the documents
27 have not been prepared under a provision of law or in accordance with an
28 order of the court. The petition for evaluation shall also be accompanied by
29 a copy of the application for emergency admission if one exists.

30 D. A petition and other forms required in a court may be filed only by
31 the screening agency that has prepared the petition.

32 E. If the petition is not filed because it has been determined that
33 the person does not need an evaluation, the agency after a period of six
34 months shall destroy the petition and the various reports annexed to the
35 petition as required by this section.

36 F. IF THE PETITION IS NOT FILED BECAUSE IT HAS BEEN DETERMINED THAT
37 THE PERSON DOES NOT NEED AN EVALUATION AND THE PERSON HAS BEEN FOUND BY A
38 COURT TO BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE
39 PERSON SHALL BE REMANDED FOR A DISPOSITION PURSUANT TO SECTION 13-4517. IF
40 THE PERSON IS OUT OF CUSTODY, THE COURT MAY ORDER THAT THE PERSON BE TAKEN
41 INTO CUSTODY FOR A DISPOSITION PURSUANT TO THIS SECTION.

42 Sec. 13. Section 36-529, Arizona Revised Statutes, is amended to read:
43 36-529. Order for evaluation; order for detention; hearing

44 A. If, from the review of the petition for evaluation, the court does
45 not determine that the proposed patient is likely to present a danger to self

1 or others or further deteriorate prior to his hearing on court-ordered
2 treatment, but determines that there is reasonable cause to believe that the
3 proposed patient is, as a result of a mental disorder, a danger to self or
4 others, ~~OR~~ OR has a persistent or acute disability or a grave disability, the
5 court shall issue an order directing the proposed patient to submit to an
6 evaluation at a designated time and place, specifying that the evaluation
7 will take place on an inpatient or an outpatient basis. The court may also
8 order that if the person does not or cannot so submit, that he be taken into
9 custody by a ~~police~~ PEACE officer and delivered to an evaluation agency. If
10 the court makes such a conditional order, it shall also make a conditional
11 appointment of counsel for the person to become effective when and if the
12 person is taken into custody pursuant to this section.

13 B. If, from review of the petition for evaluation, there is reasonable
14 cause to believe that the proposed patient is, as a result of a mental
15 disorder, a danger to self or others, ~~OR~~ OR has a persistent or acute
16 disability or a grave disability and that the person requires immediate or
17 continued hospitalization prior to his hearing on court-ordered treatment,
18 the court shall order the proposed patient taken into custody and evaluated
19 at an evaluation agency. The court shall promptly appoint counsel for the
20 proposed patient. If an intercounty agreement authorizes the same, the court
21 may order that the evaluation be conducted in another county, and the
22 superior court in the county where the evaluation is conducted shall have
23 concurrent jurisdiction to make appropriate orders concerning the proposed
24 patient.

25 C. If the person is not taken into custody or if the evaluation
26 pursuant to the order of the court under subsection A or B is not initiated
27 within fourteen days from the date of the order, the order and petition for
28 evaluation shall expire. **IF THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND
29 TRIAL PURSUANT TO SECTION 13-4510, THE COURT AND THE PROSECUTING AGENCY SHALL
30 RECEIVE NOTICE OF THE EXPIRATION OF THE ORDER FOR EVALUATION. THE COURT MAY
31 ENTER ANY ORDERS NECESSARY FOR FURTHER DISPOSITION PURSUANT TO SECTION
32 13-4517, INCLUDING A PICKUP ORDER DIRECTING THAT THE PERSON BE TAKEN INTO
33 CUSTODY. THIS SUBSECTION DOES NOT PREVENT ANY PERSON FROM INITIATING ANOTHER
34 COURT ORDERED EVALUATION OF THE PERSON PURSUANT TO TITLE 36, CHAPTER 5.**

35 D. If the person is involuntarily hospitalized, the person shall be
36 informed by his appointed attorney of his rights to a hearing to determine
37 whether he should be involuntarily hospitalized for evaluation and to be
38 represented at the hearing by an attorney. If the patient requests a hearing
39 to determine whether he should be involuntarily hospitalized during
40 evaluation, the court shall schedule a hearing at its first opportunity.

41 Sec. 14. Section 36-531, Arizona Revised Statutes, as amended by Laws
42 2014, chapter 215, section 105, is amended to read:

43 **36-531. Evaluation; possible dispositions; release**

44 A. A person being evaluated on an inpatient basis in an evaluation
45 agency shall be released if, in the opinion of the medical director of the

1 agency, further evaluation is not appropriate unless the person makes
2 application for further care and treatment on a voluntary basis.

3 B. If it is determined upon an evaluation of the patient's condition
4 that ~~he~~ THE PATIENT is, as a result of a mental disorder, a danger to self or
5 to others, ~~OR~~ has a persistent or acute disability or a grave disability,
6 the medical director in charge of the agency ~~which~~ THAT provided the
7 evaluation shall, unless the person makes application for further care and
8 treatment on a voluntary basis, prepare, sign and file a petition for
9 court-ordered treatment unless the county attorney performs the functions of
10 preparing, signing or filing the petition as provided in subsection C of this
11 section.

12 C. The agency may contact the county attorney to obtain ~~his~~ assistance
13 in preparing the petition for court-ordered treatment, and the agency may
14 request the advice and judgment of the county attorney in reaching a decision
15 as to whether court-ordered treatment is justified.

16 D. A person being evaluated on an inpatient basis in an evaluation
17 agency shall be released within seventy-two hours, excluding weekends and
18 holidays, from the time that he is hospitalized pursuant to a court order for
19 evaluation, unless the person makes application for further care and
20 treatment on a voluntary basis or unless a petition for court-ordered
21 treatment has been filed pursuant to subsection B of this section.

22 E. IF A PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO
23 SECTION 13-4510, THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE
24 IMMEDIATE NOTICE TO THE COURT AND THE PROSECUTING AGENCY OF THE DIRECTOR'S
25 INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. THE COURT MAY ORDER THE
26 PERSON RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517. AT
27 ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
28 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
29 TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

30 ~~E.~~ F. The department of health services may conduct jointly with a
31 school district, directly or indirectly, an educational evaluation pursuant
32 to sections 15-765 and 15-766 for nonadjudicated youth. The evaluation
33 information may be shared by and among authorized personnel employed by the
34 department of health services and the department of education, or authorized
35 personnel from the local education agency, for purposes of ensuring the
36 provision of special education and related services as required by the
37 individuals with disabilities education act (20 United States Code sections
38 1400 through 1415).

39 Sec. 15. Section 36-531, Arizona Revised Statutes, as amended by Laws
40 2015, chapter 195, section 30, is amended to read:

41 36-531. Evaluation; possible dispositions; release

42 A. A person who is being evaluated on an inpatient basis in an
43 evaluation agency shall be released if, in the opinion of the medical
44 director of the agency, further evaluation is not appropriate unless the
45 person applies for further care and treatment on a voluntary basis.

1 B. If it is determined on an evaluation of the patient's condition
2 that the patient is, as a result of a mental disorder, a danger to self or to
3 others or has a persistent or acute disability or a grave disability, the
4 medical director in charge of the agency that provided the evaluation, unless
5 the person applies for further care and treatment on a voluntary basis, shall
6 prepare, sign and file a petition for court-ordered treatment unless the
7 county attorney performs the functions of preparing, signing or filing the
8 petition as provided in subsection C of this section.

9 C. The agency may contact the county attorney to obtain assistance in
10 preparing the petition for court-ordered treatment, and the agency may
11 request the advice and judgment of the county attorney in reaching a decision
12 as to whether court-ordered treatment is justified.

13 D. A person being evaluated on an inpatient basis in an evaluation
14 agency shall be released within seventy-two hours, excluding weekends and
15 holidays, from the time that the person is hospitalized pursuant to a court
16 order for evaluation, unless the person applies for further care and
17 treatment on a voluntary basis or unless a petition for court-ordered
18 treatment has been filed pursuant to subsection B of this section.

19 E. IF A PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO
20 SECTION 13-4510, THE MEDICAL DIRECTOR OF AN EVALUATION AGENCY SHALL PROVIDE
21 IMMEDIATE NOTICE TO THE COURT AND THE PROSECUTING AGENCY OF THE DIRECTOR'S
22 INTENTION TO RELEASE THE PERSON UNDER THIS SECTION. THE COURT MAY ORDER THE
23 PERSON RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517. AT
24 ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
25 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
26 TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

27 ~~E.~~ F. The administration may conduct jointly with a school district,
28 directly or indirectly, an educational evaluation pursuant to sections 15-765
29 and 15-766 for nonadjudicated youth. The evaluation information may be
30 shared by and among authorized personnel employed by the administration and
31 the department of education, or authorized personnel from the local education
32 agency, for purposes of ensuring the provision of special education and
33 related services as required by the individuals with disabilities education
34 act (20 United States Code sections 1400 through 1415).

35 Sec. 16. Section 36-533, Arizona Revised Statutes, is amended to read:

36 36-533. Petition for treatment

37 A. The petition for court-ordered treatment shall allege:

38 1. That the patient is in need of a period of treatment because the
39 patient, as a result of mental disorder, is a danger to self or to others,
40 ~~OR~~ has a persistent or acute disability or a grave disability.

41 2. The treatment alternatives that are appropriate or available.

42 3. That the patient is unwilling to accept or incapable of accepting
43 treatment voluntarily.

44 B. The petition shall be accompanied by the affidavits of the two
45 physicians who participated in the evaluation and by the affidavit of the

1 applicant for the evaluation, if any. The affidavits of the physicians shall
2 describe in detail the behavior that indicates that the person, as a result
3 of mental disorder, is a danger to self or to others, ~~OR~~ OR has a persistent or
4 acute disability or a grave disability and shall be based on the physician's
5 observations of the patient and the physician's study of information about
6 the patient. A summary of the facts that support the allegations of the
7 petition shall be included. The affidavit shall also include any of the
8 results of the physical examination of the patient if relevant to the
9 patient's psychiatric condition.

10 C. The petition shall request the court to issue an order requiring
11 the person to undergo a period of treatment. **THE PETITION SHALL SET FORTH**
12 **ANY KNOWN CRIMINAL HISTORY OF THE PERSON, INCLUDING WHETHER THE PERSON HAS**
13 **BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510 AND WHETHER**
14 **THERE HAS BEEN A DETERMINATION THAT THE PERSON IS DANGEROUS PURSUANT TO**
15 **SECTION 13-4518.**

16 D. In cases of grave disability the petition shall also include:

17 1. A statement that in the opinion of the petitioner the person with a
18 grave disability does or does not require guardianship or conservatorship, or
19 both, under title 14 and the reasons on which the statement is based.

20 2. A request that the court order an independent investigation and
21 report for the court if in the opinion of the petitioner the person does
22 require guardianship or conservatorship, or both.

23 3. A statement that in the opinion of the petitioner the person with a
24 grave disability does or does not require temporary guardianship or
25 conservatorship, or both, and the reasons on which the statement is based.

26 4. A request that the court appoint a temporary guardian or
27 conservator, or both, if in the opinion of the petitioner the person does
28 require temporary guardianship or conservatorship, or both.

29 E. A copy of the petition in cases of grave disability shall be mailed
30 to the public fiduciary in the county of the patient's residence or in which
31 the patient was found before evaluation and to any person nominated as
32 guardian or conservator.

33 F. A copy of all petitions shall be mailed to the superintendent of
34 the Arizona state hospital.

35 Sec. 17. Section 36-534, Arizona Revised Statutes, is amended to read:

36 **36-534. Change to voluntary status; discharge; notice; hearing**

37 **A.** If, after a petition for court-ordered treatment has been filed and
38 prior to the hearing, the medical director of the agency finds that it is
39 more appropriate to discharge the patient or to admit the proposed patient on
40 a voluntary basis, the medical director -, after receiving approval from the
41 court, **SHALL** either discharge the patient or admit the patient for further
42 treatment on a voluntary basis.

43 **B. IF THE COURT APPROVES ADMITTING A PATIENT WHO HAS BEEN FOUND**
44 **INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510 TO VOLUNTARY TREATMENT**
45 **OR BEFORE A PATIENT IS DISCHARGED PURSUANT TO THIS SECTION, THE MEDICAL**

1 DIRECTOR SHALL PROVIDE NOTICE TO THE PROSECUTING AGENCY. THE PROSECUTING
2 AGENCY MAY REQUEST A HEARING TO DETERMINE WHETHER THE COURT SHOULD ORDER THE
3 DEFENDANT RETURNED TO CUSTODY FOR A DISPOSITION PURSUANT TO SECTION 13-4517.
4 FOR ANY HEARING HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
5 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
6 TREATMENT RECORDS, TO THE COURT AND TO THE PROSECUTING AGENCY.

7 Sec. 18. Section 36-540, Arizona Revised Statutes, is amended to read:
8 36-540. Court options

9 A. If the court finds by clear and convincing evidence that the
10 proposed patient, as a result of mental disorder, is a danger to self, is a
11 danger to others, has a persistent or acute disability or a grave disability
12 and IS in need of treatment, and is either unwilling or unable to accept
13 voluntary treatment, the court shall order the patient to undergo one of the
14 following:

15 1. Treatment in a program of outpatient treatment.

16 2. Treatment in a program consisting of combined inpatient and
17 outpatient treatment.

18 3. Inpatient treatment in a mental health treatment agency, in a
19 hospital operated by or under contract with the United States department of
20 veterans affairs to provide treatment to eligible veterans pursuant to
21 article 9 of this chapter, in the state hospital or in a private hospital, if
22 the private hospital agrees, subject to the limitations of section 36-541.

23 B. The court shall consider all available and appropriate alternatives
24 for the treatment and care of the patient. The court shall order the least
25 restrictive treatment alternative available.

26 C. The court may order the proposed patient to undergo outpatient or
27 combined inpatient and outpatient treatment pursuant to subsection A,
28 paragraph 1 or 2 of this section if the court:

29 1. Determines that all of the following apply:

30 (a) The patient does not require continuous inpatient hospitalization.

31 (b) The patient will be more appropriately treated in an outpatient
32 treatment program or in a combined inpatient and outpatient treatment
33 program.

34 (c) The patient will follow a prescribed outpatient treatment plan.

35 (d) The patient will not likely become dangerous or suffer more
36 serious physical harm or serious illness or further deterioration if the
37 patient follows a prescribed outpatient treatment plan.

38 2. Is presented with and approves a written treatment plan that
39 conforms with the requirements of section 36-540.01, subsection B. If the
40 treatment plan presented to the court pursuant to this subsection provides
41 for supervision of the patient under court order by a mental health agency
42 that is other than the mental health agency that petitioned or requested the
43 county attorney to petition the court for treatment pursuant to section
44 36-531, the treatment plan must be approved by the medical director of the

1 mental health agency that will supervise the treatment pursuant to subsection
2 E of this section.

3 D. An order to receive treatment pursuant to subsection A, paragraph 1
4 or 2 of this section shall not exceed three hundred sixty-five days. The
5 period of inpatient treatment under a combined treatment order pursuant to
6 subsection A, paragraph 2 of this section shall not exceed the maximum period
7 allowed for an order for inpatient treatment pursuant to subsection F of this
8 section.

9 E. If the court enters an order for treatment pursuant to subsection
10 A, paragraph 1 or 2 of this section, all of the following apply:

11 1. The court shall designate the medical director of the mental health
12 treatment agency that will supervise and administer the patient's treatment
13 program.

14 2. The medical director shall not use the services of any person,
15 agency or organization to supervise a patient's outpatient treatment program
16 unless the person, agency or organization has agreed to provide these
17 services in the individual patient's case and unless the department has
18 determined that the person, agency or organization is capable and competent
19 to do so.

20 3. The person, agency or organization assigned to supervise an
21 outpatient treatment program or the outpatient portion of a combined
22 treatment program shall be notified at least three days before a referral.
23 The medical director making the referral and the person, agency or
24 organization assigned to supervise the treatment program shall share relevant
25 information about the patient to provide continuity of treatment.

26 4. THE COURT MAY INCLUDE IN THE ORDER REASONABLE RESTRICTIONS ON THE
27 PATIENT'S RESIDENCE AND TRAVEL THAT ARE NECESSARY TO PROTECT THE PATIENT'S
28 WELL-BEING AND THE PUBLIC. THE COURT MAY ALSO REQUIRE THAT THE MEDICAL
29 DIRECTOR PROVIDE NOTICE TO THE COURT OF CHANGES IN THE PATIENT'S RESIDENCE,
30 EMPLOYMENT OR TERMS OF TREATMENT.

31 5. THE COURT SHALL ORDER THAT THE MEDICAL DIRECTOR PROVIDE NOTICE TO
32 THE COURT OF ANY NONCOMPLIANCE WITH THE TERMS OF A TREATMENT ORDER.

33 ~~4.~~ 6. During any period of outpatient treatment under subsection A,
34 paragraph 2 of this section, if the court, **ON ITS OWN MOTION OR** on motion by
35 the medical director of the patient's outpatient mental health treatment
36 facility, determines that the patient is not complying with the terms of the
37 order or that the outpatient treatment plan is no longer appropriate and the
38 patient needs inpatient treatment, the court, without a hearing and based on
39 the court record, the patient's medical record, the affidavits and
40 recommendations of the medical director, and the advice of staff and
41 physicians or the psychiatric and mental health nurse practitioner familiar
42 with the treatment of the patient, may enter an order amending its original
43 order. The amended order may alter the outpatient treatment plan or order
44 the patient to inpatient treatment pursuant to subsection A, paragraph 3 of
45 this section. The amended order shall not increase the total period of

1 commitment originally ordered by the court or, when added to the period of
2 inpatient treatment provided by the original order and any other amended
3 orders, exceed the maximum period allowed for an order for inpatient
4 treatment pursuant to subsection F of this section. If the patient refuses
5 to comply with an amended order for inpatient treatment, the court, **ON ITS**
6 **OWN MOTION OR ON THE REQUEST OF THE MEDICAL DIRECTOR**, may authorize and
7 direct a peace officer, ~~on the request of the medical director~~, to take the
8 patient into protective custody and transport the patient to the agency for
9 inpatient treatment. **ANY AUTHORIZATION, DIRECTIVE OR ORDER ISSUED TO A PEACE**
10 **OFFICER TO TAKE THE PATIENT INTO PROTECTIVE CUSTODY SHALL INCLUDE THE**
11 **PATIENT'S CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE**
12 **PATIENT'S CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER,**
13 **AS APPLICABLE.** When reporting to or being returned to a treatment agency for
14 inpatient treatment pursuant to an amended order, the patient shall be
15 informed of the patient's right to judicial review and the patient's right to
16 consult with counsel pursuant to section 36-546.

17 ~~5-~~ 7. During any period of outpatient treatment under subsection A,
18 paragraph 2 of this section, if the medical director of the outpatient
19 treatment facility in charge of the patient's care determines, in concert
20 with the medical director of an inpatient mental health treatment facility
21 who has agreed to accept the patient, that the patient is in need of
22 immediate acute inpatient psychiatric care because of behavior that is
23 dangerous to self or to others, the medical director of the outpatient
24 treatment facility may order a peace officer to apprehend and transport the
25 patient to the inpatient treatment facility pending a court determination on
26 an amended order under paragraph ~~4-~~ 6 of this subsection. The patient may be
27 detained and treated at the inpatient treatment facility for a period of no
28 more than forty-eight hours, exclusive of weekends and holidays, from the
29 time that the patient is taken to the inpatient treatment facility. The
30 medical director of the outpatient treatment facility shall file the motion
31 for an amended court order requesting inpatient treatment no later than the
32 next working day following the patient being taken to the inpatient treatment
33 facility. Any period of detention within the inpatient treatment facility
34 pending issuance of an amended order shall not increase the total period of
35 commitment originally ordered by the court or, when added to the period of
36 inpatient treatment provided by the original order and any other amended
37 orders, exceed the maximum period allowed for an order for inpatient
38 treatment pursuant to subsection F of this section. If a patient is ordered
39 to undergo inpatient treatment pursuant to an amended order, the medical
40 director of the outpatient treatment facility shall inform the patient of the
41 patient's right to judicial review and to consult with an attorney pursuant
42 to section 36-546.

43 F. The maximum periods of inpatient treatment that the court may
44 order, subject to the limitations of section 36-541, are as follows:

- 45 1. Ninety days for a person found to be a danger to self.

1 2. One hundred eighty days for a person found to be a danger to
2 others.

3 3. One hundred eighty days for a person found to have a persistent or
4 acute disability.

5 4. Three hundred sixty-five days for a person found to have a grave
6 disability.

7 G. If, on finding that the patient meets the criteria for
8 court-ordered treatment pursuant to subsection A of this section, the court
9 also finds that there is reasonable cause to believe that the patient is an
10 incapacitated person as defined in section 14-5101 or is a person in need of
11 protection pursuant to section 14-5401 and that the patient is or may be in
12 need of guardianship or conservatorship, or both, the court may order an
13 investigation concerning the need for a guardian or conservator, or both, and
14 may appoint a suitable person or agency to conduct the investigation. The
15 appointee may include a court appointed guardian ad litem, an investigator
16 appointed pursuant to section 14-5308 or the public fiduciary if there is no
17 person willing and qualified to act in that capacity. The court shall give
18 notice of the appointment to the appointee within three days of the
19 appointment. The appointee shall submit the report of the investigation to
20 the court within twenty-one days. The report shall include recommendations
21 as to who should be guardian or who should be conservator, or both, and a
22 report of the findings and reasons for the recommendation. If the
23 investigation and report so indicate, the court shall order the appropriate
24 person to submit a petition to become the guardian or conservator, or both,
25 of the patient.

26 H. In any proceeding for court-ordered treatment in which the petition
27 alleges that the patient is in need of a guardian or conservator and states
28 the grounds for that allegation, the court may appoint an emergency temporary
29 guardian or conservator, or both, for a specific purpose or purposes
30 identified in its order and for a specific period of time not to exceed
31 thirty days if the court finds that all of the following are true:

32 1. The patient meets the criteria for court-ordered treatment pursuant
33 to subsection A of this section.

34 2. There is reasonable cause to believe that the patient is an
35 incapacitated person as defined in section 14-5101 or is in need of
36 protection pursuant to section 14-5401, paragraph 2.

37 3. The patient does not have a guardian or conservator and the welfare
38 of the patient requires immediate action to protect the patient or the ward's
39 property.

40 4. The conditions prescribed pursuant to section 14-5310, subsection B
41 or section 14-5401.01, subsection B have been met.

42 I. The court may appoint as a temporary guardian or conservator
43 pursuant to subsection H of this section a suitable person or the public
44 fiduciary if there is no person qualified and willing to act in that
45 capacity. The court shall issue an order for an investigation as prescribed

1 pursuant to subsection G of this section and, unless the patient is
2 represented by independent counsel, the court shall appoint an attorney to
3 represent the patient in further proceedings regarding the appointment of a
4 guardian or conservator. The court shall schedule a further hearing within
5 fourteen days on the appropriate court calendar of a court that has authority
6 over guardianship or conservatorship matters pursuant to this title to
7 consider the continued need for an emergency temporary guardian or
8 conservator and the appropriateness of the temporary guardian or conservator
9 appointed, and shall order the appointed guardian or conservator to give
10 notice to persons entitled to notice pursuant to section 14-5309, subsection
11 A or section 14-5405, subsection A. The court shall authorize certified
12 letters of temporary emergency guardianship or conservatorship to be issued
13 on presentation of a copy of the court's order. If a temporary emergency
14 conservator other than the public fiduciary is appointed pursuant to this
15 subsection, the court shall order that the use of the money and property of
16 the patient by the conservator is restricted and not to be sold, used,
17 transferred or encumbered, except that the court may authorize the
18 conservator to use money or property of the patient specifically identified
19 as needed to pay an expense to provide for the care, treatment or welfare of
20 the patient pending further hearing. This subsection and subsection H of
21 this section do not:

22 1. Prevent the evaluation or treatment agency from seeking
23 guardianship and conservatorship in any other manner allowed by law at any
24 time during the period of court-ordered evaluation and treatment.

25 2. Relieve the evaluation or treatment agency from its obligations
26 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
27 chapter 4.

28 J. If, on finding that a patient meets the criteria for court-ordered
29 treatment pursuant to subsection A of this section, the court also learns
30 that the patient has a guardian appointed under title 14, the court with
31 notice may impose on the existing guardian additional duties pursuant to
32 section 14-5312.01. If the court imposes additional duties on an existing
33 guardian as prescribed in this subsection, the court may determine that the
34 patient needs to continue treatment under a court order for treatment and may
35 issue the order or determine that the patient's needs can be adequately met
36 by the guardian with the additional duties pursuant to section 14-5312.01 and
37 decline to issue the court order for treatment. If at any time after the
38 issuance of a court order for treatment the court finds that the patient's
39 needs can be adequately met by the guardian with the additional duties
40 pursuant to section 14-5312.01 and that a court order for treatment is no
41 longer necessary to assure compliance with necessary treatment, the court may
42 terminate the court order for treatment. If there is a court order for
43 treatment and a guardianship with additional mental health authority pursuant
44 to section 14-5312.01 existing at the same time, the treatment and placement
45 decisions made by the treatment agency assigned by the court to supervise and

1 administer the patient's treatment program pursuant to the court order for
2 treatment are controlling unless the court orders otherwise.

3 K. The court shall file a report as part of the court record on its
4 findings of alternatives for treatment.

5 L. Treatment shall not include psychosurgery, lobotomy or any other
6 brain surgery without specific informed consent of the patient or the
7 patient's legal guardian and an order of the superior court in the county in
8 which the treatment is proposed, approving with specificity the use of the
9 treatment.

10 M. The medical director or any person, agency or organization used by
11 the medical director to supervise the terms of an outpatient treatment plan
12 is not civilly liable for any acts committed by a patient while on outpatient
13 treatment if the medical director, person, agency or organization has in good
14 faith followed the requirements of this section.

15 N. A peace officer who in good faith apprehends and transports a
16 patient to an inpatient treatment facility on the order of the medical
17 director of the outpatient treatment facility pursuant to subsection E,
18 paragraph ~~5- 7~~ of this section is not subject to civil liability.

19 O. If a person has been found, as a result of a mental disorder, to
20 constitute a danger to self or others or to have a persistent or acute
21 disability or a grave disability and the court enters an order for treatment
22 pursuant to subsection A of this section, the court shall transmit the
23 person's name, sex, date of birth, social security number, if available, and
24 date of the order for treatment to the supreme court. The supreme court
25 shall transmit the information to the department of public safety to comply
26 with the requirements of title 13, chapter 31 and title 32, chapter 26. The
27 department of public safety shall transmit the information to the national
28 instant criminal background check system. The superior court may access the
29 information of a person who is ordered into treatment to enforce or
30 facilitate a treatment order.

31 P. On request, the clerk of the court shall provide certified copies
32 of the commitment order to a law enforcement or prosecuting agency that is
33 investigating or prosecuting a prohibited possessor as defined in section
34 13-3101.

35 Q. IF THE COURT DOES NOT FIND A PERSON TO BE IN NEED OF TREATMENT AND
36 THE PERSON HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION
37 13-4510, THE COURT SHALL NOTIFY THE PROSECUTING AGENCY OF ITS FINDING. THE
38 PERSON SHALL BE REMANDED TO THE CUSTODY OF THE SHERIFF FOR FURTHER
39 DISPOSITION PURSUANT TO SECTION 13-4517.

40 Sec. 19. Section 36-540.01, Arizona Revised Statutes, is amended to
41 read:

42 36-540.01. Conditional outpatient treatment

43 A. The medical director may issue an order for conditional outpatient
44 treatment for a patient ordered to undergo treatment pursuant to section
45 36-540 if, after consultation with staff familiar with the patient's case

1 history, the medical director determines with a reasonable degree of medical
2 probability that all of the following apply:

3 1. The patient no longer requires continuous inpatient
4 hospitalization.

5 2. The patient will be more appropriately treated in an outpatient
6 treatment program.

7 3. The patient will follow a prescribed outpatient treatment plan.

8 4. The patient will not likely become dangerous, suffer more serious
9 physical harm or serious illness or further deteriorate if the patient
10 follows a prescribed outpatient treatment plan.

11 B. The order for conditional outpatient treatment issued by the
12 medical director shall include a written outpatient treatment plan prepared
13 by staff familiar with the patient's case history and approved by the medical
14 director. The plan shall include all of the following:

15 1. A statement of the patient's requirements, if any, for supervision,
16 medication and assistance in obtaining basic needs such as employment, food,
17 clothing or shelter.

18 2. The address of the residence where the patient is to live and the
19 name of the person in charge of the residence, if any.

20 3. The name and address of any person, agency or organization assigned
21 to supervise an outpatient treatment plan or care for the patient, and the
22 extent of authority of the person, agency or organization in carrying out the
23 terms of the plan.

24 4. The conditions for continued outpatient treatment, which may
25 require periodic reporting, continuation of medication and submission to
26 testing, and may restrict travel, consumption of spirituous liquor and drugs,
27 associations with others and incurrence of debts and obligations or such
28 other reasonable conditions as the medical director may specify.

29 C. Before release for conditional outpatient treatment, the patient
30 shall be provided with copies and full explanations of the medical director's
31 order and the treatment plan. If, after full explanation, the patient
32 objects to the plan or any part of it, the objection and reasons for the
33 objection shall be noted in the patient's record. The medical director's
34 order and treatment plan shall be filed in the patient's medical file and
35 shall also be filed with the court.

36 D. The period for which conditional outpatient treatment may be
37 ordered may not exceed the remainder of the period of court ordered
38 treatment.

39 E. Before the release of a patient for outpatient treatment, the
40 medical director shall give notice pursuant to section 36-541.01, subsection
41 B and a motion for a determination by the court as to whether the standard
42 for conditional release of the patient has been met may be made by the
43 persons and in the manner provided for in section 36-541.01, subsection
44 H. Before the release of a person found to be a danger to self, ~~OR OTHERS~~
45 ~~OR FOUND to be a person with~~ HAVE a persistent or acute disability or a grave

1 disability for outpatient treatment, the medical director shall give notice
2 to the court that ordered the patient to undergo treatment. If criminal
3 charges against a patient involving death or serious physical injury or a
4 violation of title 13, chapter 14 are dismissed pursuant to section 13-4517,
5 the medical director shall notify the prosecuting agency if a civil
6 commitment order issued pursuant to this chapter expires or is terminated, or
7 if the patient is discharged to outpatient treatment. The medical director
8 shall provide this notice by mail at least ~~five~~ TEN days before the
9 anticipated date of the expiration, termination or discharge.

10 F. The medical director shall require periodic reports concerning the
11 condition of patients on conditional outpatient treatment from any person,
12 agency or organization assigned to supervise an outpatient treatment plan.
13 The medical director shall require these reports at intervals not to exceed
14 thirty days.

15 G. The medical director shall review the condition of a patient on
16 conditional outpatient treatment at least once every thirty days and enter
17 the findings in writing in the patient's file. In conducting the review, the
18 medical director shall consider all reports and information received and may
19 require the patient to report for further evaluation.

20 H. The medical director may amend any part of the outpatient treatment
21 plan during the course of conditional outpatient treatment. If the plan is
22 amended, the medical director shall issue a new order including the amended
23 outpatient treatment plan. The new order and amended outpatient treatment
24 plan shall be filed in the patient's medical file. Copies of the new order
25 and outpatient treatment plan shall be immediately provided to the patient
26 and to any person, agency or organization assigned to supervise an outpatient
27 treatment plan. Copies of the new order and outpatient treatment plan shall
28 be immediately filed with the court AND, IF THE PATIENT HAS BEEN FOUND
29 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, WITH THE PROSECUTING
30 AGENCY.

31 I. The medical director may rescind an order for conditional
32 outpatient treatment and order the patient to return to a mental health
33 treatment agency at any time during the period of court ordered treatment if,
34 in the medical director's judgment, the patient has failed to comply with a
35 term of the outpatient treatment plan or if, for any reason, the medical
36 director determines that the patient needs inpatient treatment or that
37 conditional outpatient treatment is no longer appropriate. THE MEDICAL
38 DIRECTOR SHALL GIVE NOTICE TO THE COURT THAT ISSUED THE TREATMENT ORDER AND
39 THE PROSECUTING AGENCY IF THE PATIENT HAS BEEN FOUND INCOMPETENT TO STAND
40 TRIAL PURSUANT TO SECTION 13-4510.

41 J. If the medical director rescinds an order for conditional
42 outpatient treatment and the patient is returned to a mental health treatment
43 agency for inpatient treatment, the patient shall be informed of the
44 patient's right to judicial review and right to consult with counsel pursuant
45 to section 36-546.

1 K. If the medical director rescinds an order for conditional
2 outpatient treatment and orders the patient to return to a mental health
3 treatment agency, the medical director may request, **OR A COURT MAY ORDER**, a
4 peace officer or a designated officer or employee of the treatment agency to
5 take the patient into custody for immediate delivery to the agency pursuant
6 to section 36-544.

7 L. The medical director is not civilly liable for any act committed by
8 a patient while on conditional outpatient treatment if the medical director
9 has in good faith followed the requirements of this section.

10 M. This section does not prevent the medical director from authorizing
11 a patient ordered to undergo treatment pursuant to section 36-540 as a danger
12 to self, ~~OR~~ a danger to others, ~~OR~~ a patient with a persistent or acute
13 disability or a grave disability to leave the treatment agency for periods of
14 no more than five days under the care, custody and control of a spouse,
15 relative or other responsible person if the medical director determines that
16 the patient will not become dangerous or suffer serious physical harm or
17 illness during that time.

18 N. The medical director may authorize a patient who is civilly
19 committed pursuant to section 36-540 to leave the state hospital grounds
20 unaccompanied if the leave is part of an inpatient individualized treatment
21 and discharge plan and the medical director determines that the patient will
22 not become dangerous or suffer serious physical harm or illness during that
23 time.

24 Sec. 20. Title 36, chapter 5, article 5, Arizona Revised Statutes, is
25 amended by adding section 36-540.03, to read:

26 **36-540.03. Noncompliance with outpatient treatment order:**
27 **rescission; notice; civil liability immunity**

28 **A. THE COURT THAT ENTERED THE TREATMENT ORDER FOR OUTPATIENT TREATMENT**
29 **SHALL BE IMMEDIATELY NOTIFIED IF A PATIENT IS NONCOMPLIANT AT ANY TIME WITH**
30 **ANY CONDITION OF OUTPATIENT TREATMENT, INCLUDING REPORTING, CONTINUATION OF**
31 **MEDICATION, SUBMISSION TO TESTING, TRAVEL RESTRICTIONS OR RESIDENCY**
32 **REQUIREMENTS, AND THE MEDICAL DIRECTOR IS UNSUCCESSFUL IN RESTORING**
33 **COMPLIANCE. IF THE PATIENT HAS BEEN FOUND TO BE INCOMPETENT PURSUANT TO**
34 **SECTION 13-4510, NOTICE SHALL BE IMMEDIATELY PROVIDED TO THE PROSECUTING**
35 **AGENCY.**

36 **B. THE COURT MAY ENTER ANY ORDER NECESSARY TO MAINTAIN THE PATIENT'S**
37 **HEALTH, SAFETY AND TREATMENT AND TO PROTECT THE PUBLIC, INCLUDING RESCINDING**
38 **THE OUTPATIENT TREATMENT ORDER. THE COURT MAY ENTER AN ORDER DIRECTING A**
39 **PEACE OFFICER TO TAKE THE PERSON INTO CUSTODY AND RETURN THE PATIENT TO AN**
40 **INPATIENT TREATMENT FACILITY. THE COURT ORDER SHALL INCLUDE THE PATIENT'S**
41 **KNOWN CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE PATIENT'S**
42 **CASE MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER, AS**
43 **APPLICABLE.**

1 C. IF THE COURT RESCINDS AN ORDER FOR OUTPATIENT TREATMENT PURSUANT TO
2 THIS SECTION, THE PATIENT SHALL BE INFORMED OF THE PATIENT'S RIGHT TO
3 JUDICIAL REVIEW AND RIGHT TO CONSULT WITH COUNSEL PURSUANT TO SECTION 36-546.

4 D. THE MEDICAL DIRECTOR OF THE MENTAL HEALTH TREATMENT AGENCY IS NOT
5 LIABLE IN ANY CIVIL ACTION FOR ANY ACT THAT IS COMMITTED BY A PATIENT WHO IS
6 NONCOMPLIANT WITH THE PATIENT'S TREATMENT ORDERS IF THE MEDICAL DIRECTOR HAS
7 IN GOOD FAITH FOLLOWED THE REQUIREMENTS OF THIS SECTION.

8 Sec. 21. Section 36-541.01, Arizona Revised Statutes, as amended by
9 Laws 2014, chapter 215, section 113, is amended to read:

10 36-541.01. Release or discharge from treatment before
11 expiration of period ordered by court;
12 notification of intent to release or discharge;
13 hearing

14 A. A patient WHO IS ordered to undergo treatment pursuant to this
15 article may be released from treatment before the expiration of the period
16 ordered by the court if, in the opinion of the medical director of the mental
17 health treatment agency, the patient no longer is, as a result of a mental
18 disorder, a danger to others, ~~OR~~ a danger to self, ~~OR~~ NO LONGER has a
19 persistent or acute disability or a grave disability. A person WHO IS
20 ordered to undergo treatment as a danger to others OR WHO HAS BEEN FOUND
21 INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510 may not be released or
22 discharged from treatment before the expiration of the period for treatment
23 ordered by the court unless the medical director first gives notice of
24 intention to do so as provided by this section.

25 B. Before the release or discharge of a patient ordered to undergo
26 treatment, the medical director of the mental health treatment agency shall
27 notify the following of the medical director's intention to release or
28 discharge the patient:

29 1. The presiding judge of the court that entered the order for
30 treatment.

31 2. Any relative or victim of the patient who has filed a demand for
32 notice with the treatment agency.

33 3. Any person found by the court to have a legitimate reason for
34 receiving notice.

35 C. If criminal charges against a patient involving death or serious
36 physical injury or a violation of title 13, chapter 14 are dismissed pursuant
37 to section 13-4517, the medical director shall notify the COURT AND THE
38 prosecuting agency if a civil commitment order issued pursuant to this
39 chapter expires or is terminated, or if the patient is discharged to
40 outpatient treatment. The medical director shall provide this notice by mail
41 at least ~~five~~ TEN days before the anticipated date of the expiration,
42 termination or discharge.

43 D. If the director of the mental health treatment agency is unable to
44 determine, based on the information submitted pursuant to subsection E OF
45 THIS SECTION, that a person who has filed a demand for notice is a victim the

1 director shall inform that person that that person's demand for notice is
2 denied and that notice will not be given unless ordered by the court pursuant
3 to subsection F OF THIS SECTION.

4 E. A demand for notice by a relative or victim, and a petition for
5 notice by other persons, shall be on a form prescribed by the department and
6 shall include the following information:

7 1. The full name of the person to receive notice.

8 2. The address to which notice is to be mailed.

9 3. The telephone number of the person to receive notice.

10 4. The relationship to the patient, if any, or the reasons why the
11 person believes the person has a legitimate reason to receive notice.

12 5. A statement that the person will advise the treatment agency in
13 writing by certified mail, return receipt requested, of any change in the
14 address to which notice is to be mailed.

15 6. The full name of the patient WHO IS ordered to undergo treatment as
16 a danger to others OR WHO HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT
17 TO SECTION 13-4510.

18 7. The mental health number assigned to the case by the superior
19 court.

20 F. If the court receives a demand for notice by a relative or victim,
21 the court shall order the medical director of the mental health treatment
22 agency not to release or discharge the patient before the expiration of the
23 period of court-ordered treatment without first giving notice to the relative
24 or victim as provided in subsection G OF THIS SECTION. After considering a
25 petition for notice, if the court finds that the petitioner has a legitimate
26 reason for receiving prior notice, the court may order the medical director
27 of the mental health treatment agency not to release or discharge the patient
28 from inpatient treatment before the expiration of the period of court-ordered
29 treatment without first giving notice to the petitioner as provided in
30 subsection G OF THIS SECTION. Any order for notice shall be delivered to the
31 mental health treatment agency and shall be filed with the patient's clinical
32 record. If the patient is transferred to another agency or institution, any
33 orders for notice shall be transferred with the patient.

34 G. A notice of intention to release or discharge shall include the
35 following information:

36 1. The name of the patient to be released or discharged.

37 2. The type of release or discharge.

38 3. The date of anticipated release or discharge. Notices shall be
39 placed in the mail, postage prepaid and addressed to the court and to each
40 person for whom notice has been ordered, at least ten days before the date of
41 intended release or discharge except notice shall be sent to the prosecuting
42 agency at least ~~five~~ TEN days before the date of intended release or
43 discharge. For purposes of computing the notice requirement, the day of
44 mailing shall not be counted.

1 H. Any person for whom prior notice is required pursuant to this
2 section, or the court, may make a motion within the notification period that
3 requires the court to determine whether the standard for release of the
4 patient before the expiration of the period for court-ordered treatment has
5 been met. A determination that the standard for release has been met may be
6 made by the court based on a review of the record and any affidavits
7 submitted without further hearing. For good cause, the court may order an
8 evidentiary hearing. Whether or not a hearing is held, the court shall make
9 a determination at the earliest possible time but no longer than three weeks
10 after the anticipated date of release pursuant to subsection G OF THIS
11 SECTION, and the patient shall be retained for the additional time required
12 for the court's determination. In making its determination the court may
13 order an independent examination of the patient. If a motion is not made,
14 the patient may be released in accordance with the terms set forth in the
15 notice without further court order. IF A HEARING IS HELD PURSUANT TO THIS
16 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE
17 PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND
18 THE PROSECUTING AGENCY.

19 I. If a motion has not been made pursuant to subsection H OF THIS
20 SECTION, the patient may be released or discharged and the medical director
21 of the mental health treatment agency shall send to the court a certificate
22 that the patient is no longer a danger to others, ~~OR~~ a danger to self, ~~OR~~
23 NO LONGER has a persistent or acute disability or a grave disability as the
24 result of a mental disorder and therefore is released before the expiration
25 of the period ordered for treatment. The court shall enter an order
26 terminating the patient's court-ordered treatment.

27 J. The medical director of the mental health treatment agency shall
28 not be held civilly liable for any acts committed by a patient released
29 before the expiration of the period of court-ordered treatment if the medical
30 director has in good faith followed the requirements of this section.

31 Sec. 22. Section 36-541.01, Arizona Revised Statutes, as amended by
32 Laws 2015, chapter 195, section 33, is amended to read:

33 36-541.01. Release or discharge from treatment before
34 expiration of period ordered by court:
35 notification of intent to release or discharge:
36 hearing

37 A. A patient who is ordered to undergo treatment pursuant to this
38 article may be released from treatment before the expiration of the period
39 ordered by the court if, in the opinion of the medical director of the mental
40 health treatment agency, the patient no longer is, as a result of a mental
41 disorder, a danger to others or a danger to self or no longer has a
42 persistent or acute disability or a grave disability. A person who is
43 ordered to undergo treatment as a danger to others OR WHO HAS BEEN FOUND TO
44 BE INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510 may not be released
45 or discharged from treatment before the expiration of the period for

1 treatment ordered by the court unless the medical director first gives notice
2 of intention to do so as provided by this section.

3 B. Before the release or discharge of a patient who is ordered to
4 undergo treatment, the medical director of the mental health treatment agency
5 shall notify the following of the medical director's intention to release or
6 discharge the patient:

7 1. The presiding judge of the court that entered the order for
8 treatment.

9 2. Any relative or victim of the patient who has filed a demand for
10 notice with the treatment agency.

11 3. Any person found by the court to have a legitimate reason for
12 receiving notice.

13 C. If criminal charges against a patient involving death or serious
14 physical injury or a violation of title 13, chapter 14 are dismissed pursuant
15 to section 13-4517, the medical director shall notify the **COURT AND THE**
16 prosecuting agency if a civil commitment order issued pursuant to this
17 chapter expires or is terminated, or if the patient is discharged to
18 outpatient treatment. The medical director shall provide this notice by mail
19 at least ~~five~~ **TEN** days before the anticipated date of the expiration,
20 termination or discharge.

21 D. If the director of the mental health treatment agency is unable to
22 determine, based on the information submitted pursuant to subsection E of
23 this section, that a person who has filed a demand for notice is a victim,
24 the director shall inform that person that that person's demand for notice is
25 denied and that notice will not be given unless ordered by the court pursuant
26 to subsection F of this section.

27 E. A demand for notice by a relative or victim, and a petition for
28 notice by other persons, shall be on a form prescribed by the administration
29 and shall include the following information:

30 1. The full name of the person to receive notice.

31 2. The address to which notice is to be mailed.

32 3. The telephone number of the person to receive notice.

33 4. The relationship to the patient, if any, or the reasons why the
34 person believes the person has a legitimate reason to receive notice.

35 5. A statement that the person will advise the treatment agency in
36 writing by certified mail, return receipt requested, of any change in the
37 address to which notice is to be mailed.

38 6. The full name of the patient ordered to undergo treatment as a
39 danger to others **OR WHO HAS BEEN FOUND TO BE INCOMPETENT TO STAND TRIAL**
40 **PURSUANT TO SECTION 13-4510.**

41 7. The mental health number assigned to the case by the superior
42 court.

1 F. If the court receives a demand for notice by a relative or victim,
2 the court shall order the medical director of the mental health treatment
3 agency not to release or discharge the patient before the expiration of the
4 period of court-ordered treatment without first giving notice to the relative
5 or victim as provided in subsection G of this section. After considering a
6 petition for notice, if the court finds that the petitioner has a legitimate
7 reason for receiving prior notice, the court may order the medical director
8 of the mental health treatment agency not to release or discharge the patient
9 from inpatient treatment before the expiration of the period of court-ordered
10 treatment without first giving notice to the petitioner as provided in
11 subsection G of this section. Any order for notice shall be delivered to the
12 mental health treatment agency and shall be filed with the patient's clinical
13 record. If the patient is transferred to another agency or institution, any
14 orders for notice shall be transferred with the patient.

15 G. A notice of intention to release or discharge shall include the
16 following information:

- 17 1. The name of the patient to be released or discharged.
- 18 2. The type of release or discharge.
- 19 3. The date of anticipated release or discharge. Notices shall be
20 placed in the mail, postage prepaid and addressed to the court and to each
21 person for whom notice has been ordered, at least ten days before the date of
22 intended release or discharge, except that notice shall be sent to the
23 prosecuting agency at least ~~five~~ TEN days before the date of intended release
24 or discharge. For purposes of computing the notice requirement, the day of
25 mailing shall not be counted.

26 H. Any person for whom prior notice is required pursuant to this
27 section, or the court, may make a motion within the notification period that
28 requires the court to determine whether the standard for release of the
29 patient before the expiration of the period for court-ordered treatment has
30 been met. A determination that the standard for release has been met may be
31 made by the court based on a review of the record and any affidavits
32 submitted without further hearing. For good cause, the court may order an
33 evidentiary hearing. Whether or not a hearing is held, the court shall make
34 a determination at the earliest possible time but no longer than three weeks
35 after the anticipated date of release pursuant to subsection G of this
36 section, and the patient shall be retained for the additional time required
37 for the court's determination. In making its determination the court may
38 order an independent examination of the patient. If a motion is not made,
39 the patient may be released in accordance with the terms set forth in the
40 notice without further court order. **IF A HEARING IS HELD PURSUANT TO THIS
41 SUBSECTION, THE COURT SHALL ORDER THE MEDICAL DIRECTOR TO PROVIDE THE
42 PATIENT'S RECORDS, INCLUDING MEDICAL AND TREATMENT RECORDS, TO THE COURT AND
43 THE PROSECUTING AGENCY.**

44 I. If a motion has not been made pursuant to subsection H of this
45 section, the patient may be released or discharged and the medical director

1 of the mental health treatment agency shall send to the court a certificate
2 that the patient is no longer a danger to others or a danger to self or no
3 longer has a persistent or acute disability or a grave disability as the
4 result of a mental disorder and therefore is released before the expiration
5 of the period ordered for treatment. The court shall enter an order
6 terminating the patient's court-ordered treatment.

7 J. The medical director of the mental health treatment agency shall
8 not be held civilly liable for any acts committed by a patient who is
9 released before the expiration of the period of court-ordered treatment if
10 the medical director has in good faith followed the requirements of this
11 section.

12 Sec. 23. Section 36-543, Arizona Revised Statutes, as amended by Laws
13 2014, chapter 215, section 114, is amended to read:

14 36-543. Release from treatment of a patient with a grave
15 disability or a patient with a persistent or acute
16 disability; notice; annual review; court order for
17 continued treatment

18 A. A patient found to have a grave disability or a persistent or acute
19 disability and ordered to undergo treatment may be released from inpatient
20 treatment when, in the opinion of the medical director of the mental health
21 treatment agency, the level of care offered by the agency is no longer
22 required. The patient may agree to continue treatment voluntarily. If the
23 patient is to be released, the medical director shall arrange for an
24 appropriate alternative placement. IF THE PATIENT HAS BEEN FOUND INCOMPETENT
25 TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE MEDICAL DIRECTOR SHALL
26 PROVIDE NOTICE OF THE INTENT TO RELEASE THE PATIENT TO THE COURT AND THE
27 PROSECUTING AGENCY AT LEAST TEN DAYS BEFORE THE ANTICIPATED DATE OF THE
28 PATIENT'S RELEASE. THE COURT MAY ENTER ANY ORDERS NECESSARY TO MAINTAIN THE
29 PATIENT'S HEALTH, SAFETY AND TREATMENT AND TO PROTECT THE PUBLIC. IF A
30 HEARING IS HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE
31 MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND
32 TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.

33 B. If a patient to be released from inpatient treatment is under
34 guardianship, the medical director of the mental health treatment agency
35 shall notify the guardian and any relevant regional behavioral health
36 authority ten days before the intended release date that the ward no longer
37 requires the level of care offered by the agency. The guardian and, if
38 relevant, the regional behavioral health authority shall arrange alternative
39 placement with the advice and recommendations of the medical director of the
40 mental health treatment agency.

41 C. The medical director of the mental health treatment agency is not
42 civilly liable for any acts committed by the released patient if the medical
43 director has in good faith complied with the requirements of this article.

44 D. Within ninety days before the expiration of a court order for
45 treatment, the medical director of the mental health treatment agency shall

1 conduct an annual review of a patient who has been found to have a grave
2 disability or a persistent or acute disability and is undergoing
3 court-ordered treatment to determine whether the continuation of
4 court-ordered treatment is appropriate and to assess the needs of the patient
5 for guardianship or conservatorship, or both. The annual review shall
6 consist of the mental health treatment and clinical records contained in the
7 patient's treatment file. The mental health treatment agency shall keep a
8 record of the annual review. If the medical director believes that a
9 continuation of court-ordered treatment is appropriate, the medical director
10 of the mental health treatment agency shall appoint one or more psychiatrists
11 to carry out a psychiatric examination of the patient. In any proceeding
12 conducted pursuant to this section, a patient has the right to have an
13 analysis of the patient's mental condition by an independent evaluation
14 pursuant to section 36-538.

15 E. Each examiner participating in the psychiatric examination of the
16 patient shall submit a report to the medical director of the mental health
17 treatment agency that includes the following:

18 1. The examiner's opinions as to whether the patient continues to have
19 a grave disability or a persistent or acute disability as the result of a
20 mental disorder and BE in need of continued court-ordered treatment. In
21 evaluating the patient's need for continued court-ordered treatment, the
22 examiner must consider, along with all other evidence, the patient's history
23 before and during the current period of court-ordered treatment, the
24 patient's compliance with recommended treatment and any other evidence
25 relevant to the patient's ability and willingness to follow recommended
26 treatment with or without a court order.

27 2. A statement as to whether suitable alternatives to court-ordered
28 treatment are available.

29 3. A statement as to whether voluntary treatment would be appropriate.

30 4. A review of the patient's status as to guardianship or
31 conservatorship, or both, the adequacy of existing protections of the patient
32 and the continued need for guardianship or conservatorship, or both. If the
33 examiner concludes that the patient's needs in these areas are not being
34 adequately met, the examiner's report shall recommend that the court order an
35 investigation into the patient's needs.

36 5. If the patient has an existing guardian who does not have the
37 mental health powers authorized pursuant to section 14-5312.01, a
38 recommendation as to whether the additional mental health powers authorized
39 by section 14-5312.01 should be imposed on the existing guardian and whether
40 the patient's needs can be adequately addressed by a guardian with mental
41 health powers without the need for a court order for treatment or whether the
42 court order for treatment should continue regardless of the additional mental
43 health powers imposed on the guardian.

1 6. The results of any physical examination conducted during the period
2 of court-ordered treatment if relevant to the psychiatric condition of the
3 patient.

4 F. After conducting the annual review as prescribed in this section,
5 if the medical director believes that continued court-ordered treatment is
6 necessary or appropriate, not later than thirty days before the expiration of
7 the court order for treatment, the medical director shall file with the court
8 an application for continued court-ordered treatment alleging the basis for
9 the application and shall file simultaneously with the application any
10 psychiatric examination conducted as part of the annual review. If the
11 patient is under guardianship, the medical director shall mail a copy of the
12 application to the patient's guardian.

13 G. If an application for continued court-ordered treatment is filed,
14 all of the following apply:

15 1. If the patient does not have an attorney, the court shall appoint
16 an attorney to represent the patient.

17 2. Within ten days after appointment, an attorney appointed pursuant
18 to this subsection, to the extent possible, shall fulfill the duties imposed
19 pursuant to section 36-537, review the medical director's report and the
20 patient's medical records, interview any physician who prepared a report on
21 the annual review and file a response requesting a hearing or submitting the
22 matter to the court for a ruling based on the record without a hearing.

23 3. If a hearing is not requested, the court shall rule on the
24 application or set the matter for hearing. If a hearing is requested, the
25 hearing shall be held within three weeks after the request for hearing is
26 filed. The hearing may be continued for good cause on motion of a party or
27 on the court's own motion, and the expiration of the current court order for
28 treatment may be extended until a ruling by the court on an application filed
29 pursuant to this subsection.

30 4. The patient's attorney must be present at all hearings and may
31 subpoena and cross-examine witnesses and present evidence. The patient has
32 the right to attend all hearings, but may choose not to attend a hearing.
33 The patient's attorney may waive the patient's presence after speaking with
34 the patient and confirming that the patient understands the right to be
35 present and does not desire to attend. If the patient is unable to be
36 present at the hearing for medical or psychiatric reasons and the hearing
37 cannot be conducted where the patient is being treated or confined, or the
38 patient cannot appear by another reasonably feasible means, the court shall
39 require clear and convincing evidence that the patient is unable to be
40 present at the hearing and on such a finding may proceed with the hearing in
41 the patient's absence.

42 5. The evidence presented by the applicant includes the testimony of
43 one or more witnesses acquainted with the patient during the period of
44 court-ordered treatment, which may be satisfied by a statement agreed on by
45 the parties, and the testimony of any physician who performed an annual

1 review of the patient, which may be satisfied by stipulating to the admission
2 of the examining physicians' written report prepared pursuant subsection E of
3 this section. The court may waive the need for the applicant to present the
4 testimony of witnesses acquainted with the patient as required by this
5 subsection, if it finds that the need for a continued court order for
6 treatment has been established by clear and convincing evidence from the
7 other testimony and evidence presented at the hearing.

8 6. At a hearing held pursuant to this subsection, the court, with
9 notice, may impose on an existing guardian additional powers pursuant to
10 section 14-5312.01. If the court finds that the patient's needs can be
11 adequately met by an existing guardian with the additional powers pursuant to
12 section 14-5312.01 and that a court order for treatment is not necessary to
13 ensure compliance with necessary treatment, the court may terminate the court
14 order for treatment or decline to issue an order continuing court-ordered
15 treatment. The court may also order an investigation into the need for
16 guardianship or conservatorship, or both, and may appoint a suitable person
17 or agency to conduct the investigation. The appointee may include a
18 court-appointed guardian ad litem, a court-appointed investigator pursuant to
19 section 14-5308 or the public fiduciary if there is no person willing and
20 qualified to act in that capacity. The court shall give notice of the
21 appointment to the appointee within three days after the appointment. The
22 appointee shall submit the report of the investigation to the court within
23 twenty-one days. The report shall include recommendations as to who should
24 be guardian or conservator, or both, and the findings and reasons for the
25 recommendation. If the investigation and report so indicate, the court may
26 authorize an appropriate person to file a petition for appointment of a
27 guardian or conservator for the patient.

28 H. If a hearing is held pursuant to subsection G of this section, the
29 party seeking the renewal of the court order must prove all of the following
30 by clear and convincing evidence:

31 1. The patient continues to have a mental disorder and, as a result of
32 that disorder, has either a persistent or acute disability or a grave
33 disability.

34 2. The patient is in need of continued court-ordered treatment.

35 3. The patient is either unwilling or unable to accept treatment
36 voluntarily.

37 I. After a hearing held pursuant to subsection G of this section, the
38 court may order the patient to be released from court-ordered treatment or to
39 undergo continued court-ordered treatment for a period not to exceed the time
40 periods prescribed in section 36-540, subsection D.

41 J. The deputy director shall create and operate a program to ensure
42 that the examination and review of persons with grave disabilities or
43 persistent or acute disabilities under court order are carried out in an
44 effective and timely manner. The deputy director, with the approval of the
45 director, shall adopt rules needed to operate this program.

1 Sec. 24. Section 36-543, Arizona Revised Statutes, as amended by Laws
2 2015, chapter 195, section 34, is amended to read:

3 36-543. Release from treatment of a patient with a grave
4 disability or a persistent or acute disability;
5 notice; annual review; court order for continued
6 treatment; rules

7 A. A patient who is found to have a grave disability or a persistent
8 or acute disability and ordered to undergo treatment may be released from
9 inpatient treatment when, in the opinion of the medical director of the
10 mental health treatment agency, the level of care offered by the agency is no
11 longer required. The patient may agree to continue treatment voluntarily.
12 If the patient is to be released, the medical director shall arrange for an
13 appropriate alternative placement. **IF THE PATIENT HAS BEEN FOUND INCOMPETENT**
14 **TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE MEDICAL DIRECTOR SHALL**
15 **PROVIDE NOTICE OF THE INTENT TO RELEASE THE PATIENT TO THE COURT AND THE**
16 **PROSECUTING AGENCY AT LEAST TEN DAYS BEFORE THE ANTICIPATED DATE OF THE**
17 **PATIENT'S RELEASE. THE COURT MAY ENTER ANY ORDERS NECESSARY TO MAINTAIN THE**
18 **PATIENT'S HEALTH, SAFETY AND TREATMENT AND TO PROTECT THE PUBLIC. IF A**
19 **HEARING IS HELD PURSUANT TO THIS SUBSECTION, THE COURT SHALL ORDER THE**
20 **MEDICAL DIRECTOR TO PROVIDE THE PATIENT'S RECORDS, INCLUDING MEDICAL AND**
21 **TREATMENT RECORDS, TO THE COURT AND THE PROSECUTING AGENCY.**

22 B. If a patient who is to be released from inpatient treatment is
23 under guardianship, the medical director of the mental health treatment
24 agency shall notify the guardian and any relevant regional behavioral health
25 authority ten days before the intended release date that the ward no longer
26 requires the level of care offered by the agency. The guardian and, if
27 relevant, the regional behavioral health authority shall arrange alternative
28 placement with the advice and recommendations of the medical director of the
29 mental health treatment agency.

30 C. The medical director of the mental health treatment agency is not
31 civilly liable for any acts committed by the released patient if the medical
32 director has in good faith complied with the requirements of this article.

33 D. Within ninety days before the expiration of a court order for
34 treatment, the medical director of the mental health treatment agency shall
35 conduct an annual review of a patient who has been found to have a grave
36 disability or a persistent or acute disability and is undergoing
37 court-ordered treatment to determine whether the continuation of
38 court-ordered treatment is appropriate and to assess the needs of the patient
39 for guardianship or conservatorship, or both. The annual review shall
40 consist of the mental health treatment and clinical records contained in the
41 patient's treatment file. The mental health treatment agency shall keep a
42 record of the annual review. If the medical director believes that a
43 continuation of court-ordered treatment is appropriate, the medical director
44 of the mental health treatment agency shall appoint one or more psychiatrists
45 to carry out a psychiatric examination of the patient. In any proceeding

1 conducted pursuant to this section, a patient has the right to have an
2 analysis of the patient's mental condition by an independent evaluation
3 pursuant to section 36-538.

4 E. Each examiner participating in the psychiatric examination of the
5 patient shall submit a report to the medical director of the mental health
6 treatment agency that includes the following:

7 1. The examiner's opinions as to whether the patient continues to have
8 a grave disability or a persistent or acute disability as the result of a
9 mental disorder and be in need of continued court-ordered treatment. In
10 evaluating the patient's need for continued court-ordered treatment, the
11 examiner must consider, along with all other evidence, the patient's history
12 before and during the current period of court-ordered treatment, the
13 patient's compliance with recommended treatment and any other evidence
14 relevant to the patient's ability and willingness to follow recommended
15 treatment with or without a court order.

16 2. A statement as to whether suitable alternatives to court-ordered
17 treatment are available.

18 3. A statement as to whether voluntary treatment would be appropriate.

19 4. A review of the patient's status as to guardianship or
20 conservatorship, or both, the adequacy of existing protections of the patient
21 and the continued need for guardianship or conservatorship, or both. If the
22 examiner concludes that the patient's needs in these areas are not being
23 adequately met, the examiner's report shall recommend that the court order an
24 investigation into the patient's needs.

25 5. If the patient has an existing guardian who does not have the
26 mental health powers authorized pursuant to section 14-5312.01, a
27 recommendation as to whether the additional mental health powers authorized
28 by section 14-5312.01 should be imposed on the existing guardian and whether
29 the patient's needs can be adequately addressed by a guardian with mental
30 health powers without the need for a court order for treatment or whether the
31 court order for treatment should continue regardless of the additional mental
32 health powers imposed on the guardian.

33 6. The results of any physical examination conducted during the period
34 of court-ordered treatment if relevant to the psychiatric condition of the
35 patient.

36 F. After conducting the annual review as prescribed in this section,
37 if the medical director believes that continued court-ordered treatment is
38 necessary or appropriate, not later than thirty days before the expiration of
39 the court order for treatment, the medical director shall file with the court
40 an application for continued court-ordered treatment alleging the basis for
41 the application and shall file simultaneously with the application any
42 psychiatric examination conducted as part of the annual review. If the
43 patient is under guardianship, the medical director shall mail a copy of the
44 application to the patient's guardian.

1 G. If an application for continued court-ordered treatment is filed,
2 all of the following apply:

3 1. If the patient does not have an attorney, the court shall appoint
4 an attorney to represent the patient.

5 2. Within ten days after appointment, an attorney appointed pursuant
6 to this subsection, to the extent possible, shall fulfill the duties imposed
7 pursuant to section 36-537, review the medical director's report and the
8 patient's medical records, interview any physician who prepared a report on
9 the annual review and file a response requesting a hearing or submitting the
10 matter to the court for a ruling based on the record without a hearing.

11 3. If a hearing is not requested, the court shall rule on the
12 application or set the matter for hearing. If a hearing is requested, the
13 hearing shall be held within three weeks after the request for hearing is
14 filed. The hearing may be continued for good cause on motion of a party or
15 on the court's own motion, and the expiration of the current court order for
16 treatment may be extended until a ruling by the court on an application filed
17 pursuant to this subsection.

18 4. The patient's attorney must be present at all hearings and may
19 subpoena and cross-examine witnesses and present evidence. The patient has
20 the right to attend all hearings, but may choose not to attend a hearing.
21 The patient's attorney may waive the patient's presence after speaking with
22 the patient and confirming that the patient understands the right to be
23 present and does not desire to attend. If the patient is unable to be
24 present at the hearing for medical or psychiatric reasons and the hearing
25 cannot be conducted where the patient is being treated or confined, or the
26 patient cannot appear by another reasonably feasible means, the court shall
27 require clear and convincing evidence that the patient is unable to be
28 present at the hearing and on such a finding may proceed with the hearing in
29 the patient's absence.

30 5. The evidence presented by the applicant includes the testimony of
31 one or more witnesses acquainted with the patient during the period of
32 court-ordered treatment, which may be satisfied by a statement agreed on by
33 the parties, and the testimony of any physician who performed an annual
34 review of the patient, which may be satisfied by stipulating to the admission
35 of the examining physicians' written report prepared pursuant subsection E of
36 this section. The court may waive the need for the applicant to present the
37 testimony of witnesses acquainted with the patient as required by this
38 subsection, if it finds that the need for a continued court order for
39 treatment has been established by clear and convincing evidence from the
40 other testimony and evidence presented at the hearing.

41 6. At a hearing held pursuant to this subsection, the court, with
42 notice, may impose on an existing guardian additional powers pursuant to
43 section 14-5312.01. If the court finds that the patient's needs can be
44 adequately met by an existing guardian with the additional powers pursuant to
45 section 14-5312.01 and that a court order for treatment is not necessary to

1 ensure compliance with necessary treatment, the court may terminate the court
2 order for treatment or decline to issue an order continuing court-ordered
3 treatment. The court may also order an investigation into the need for
4 guardianship or conservatorship, or both, and may appoint a suitable person
5 or agency to conduct the investigation. The appointee may include a
6 court-appointed guardian ad litem, a court-appointed investigator pursuant to
7 section 14-5308 or the public fiduciary if there is no person willing and
8 qualified to act in that capacity. The court shall give notice of the
9 appointment to the appointee within three days after the appointment. The
10 appointee shall submit the report of the investigation to the court within
11 twenty-one days. The report shall include recommendations as to who should
12 be guardian or conservator, or both, and the findings and reasons for the
13 recommendation. If the investigation and report so indicate, the court may
14 authorize an appropriate person to file a petition for appointment of a
15 guardian or conservator for the patient.

16 H. If a hearing is held pursuant to subsection G of this section, the
17 party seeking the renewal of the court order must prove all of the following
18 by clear and convincing evidence:

19 1. The patient continues to have a mental disorder and, as a result of
20 that disorder, has either a persistent or acute disability or a grave
21 disability.

22 2. The patient is in need of continued court-ordered treatment.

23 3. The patient is either unwilling or unable to accept treatment
24 voluntarily.

25 I. After a hearing held pursuant to subsection G of this section, the
26 court may order the patient to be released from court-ordered treatment or to
27 undergo continued court-ordered treatment for a period not to exceed the time
28 periods prescribed in section 36-540, subsection D.

29 J. The director shall create and operate a program to ensure that the
30 examination and review of persons with grave disabilities or persistent or
31 acute disabilities under court order are carried out in an effective and
32 timely manner. The director shall adopt rules needed to operate this
33 program.

34 Sec. 25. Section 36-544, Arizona Revised Statutes, is amended to read:

35 36-544. Unauthorized absences; notice; violation;
36 classification; tolling period; hearing

37 A. When any patient who is being evaluated or treated is absent
38 without proper authorization from an evaluation agency or a mental health
39 treatment agency, or when an order for outpatient treatment is rescinded, any
40 peace officer shall, upon oral or written request of the medical director of
41 the agency and without the necessity of a warrant or court order, or any
42 officer or employee of the agency who has been previously designated in
43 writing by the medical director of the agency to perform such duties may,
44 take into custody and deliver such patient to the agency. Such officers and
45 employees of the agency have the powers and duties of peace officers so far

1 as is necessary to carry out the provisions of this section. IF THE PATIENT
2 HAS NOT RETURNED WITHIN SEVEN DAYS AFTER THE BEGINNING OF THE UNAUTHORIZED
3 ABSENCE, THE MEDICAL DIRECTOR SHALL REQUEST A PEACE OFFICER TO TAKE THE
4 PATIENT INTO CUSTODY AND DELIVER THE PATIENT TO THE AGENCY. IF THE PATIENT
5 HAS BEEN FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE
6 MEDICAL DIRECTOR SHALL NOTIFY THE COURT OF THE PATIENT'S ABSENCE AS SOON AS
7 THE AGENCY KNOWS OR SHOULD HAVE KNOWN OF THE PATIENT'S UNAUTHORIZED ABSENCE.
8 THE COURT MAY ENTER ANY ORDER NECESSARY TO TAKE THE PATIENT INTO CUSTODY,
9 RETURN THE PATIENT TO THE AGENCY AND PROTECT THE PUBLIC. ANY ORDER DIRECTING
10 A PEACE OFFICER TO TAKE THE PATIENT INTO CUSTODY SHALL INCLUDE THE PATIENT'S
11 CRIMINAL HISTORY AND THE NAME AND TELEPHONE NUMBERS OF THE PATIENT'S CASE
12 MANAGER, GUARDIAN, SPOUSE, NEXT OF KIN OR SIGNIFICANT OTHER, AS APPLICABLE.

13 B. Any person who intentionally assists any patient being evaluated or
14 treated in an agency to be absent from the agency without proper
15 authorization, or who intentionally assists a patient whom he knows to be
16 absent without proper authorization or whom he knows to be a patient whose
17 order for outpatient treatment has been rescinded and who has been ordered to
18 return to the agency, or to resist being returned to the agency after such
19 absence is guilty of a class 2 misdemeanor.

20 C. The period of court-ordered treatment ceases to run during the
21 ~~unauthorized absence of~~ TIME the patient IS ABSENT WITHOUT AUTHORIZATION from
22 the ~~jurisdiction~~ TREATMENT AGENCY or from any required supervision OR IS
23 OTHERWISE NONCOMPLIANT WITH TREATMENT ORDERS and resumes running only on the
24 patient's voluntary or involuntary return to the treatment agency OR
25 COMPLIANCE WITH TREATMENT ORDERS. THE PATIENT SHALL REMAIN ENROLLED WITH THE
26 MENTAL HEALTH TREATMENT AGENCY, NOTWITHSTANDING THE PATIENT'S UNAUTHORIZED
27 ABSENCE, UNTIL THE EXPIRATION OF THE TREATMENT ORDER OR UNLESS OTHERWISE
28 ORDERED BY THE COURT.

29 D. A patient who remains on unauthorized absence status continuously
30 for at least ninety days may petition the court on his return to the
31 treatment agency for a hearing to determine his current mental status and his
32 present need for treatment. The court shall order a hearing if requested by
33 the patient, his legal guardian or an interested party. The hearing shall be
34 held within seventy-two hours after the request. IF THE PATIENT HAS BEEN
35 FOUND INCOMPETENT TO STAND TRIAL PURSUANT TO SECTION 13-4510, THE COURT AND
36 THE PROSECUTING AGENCY SHALL RECEIVE NOTICE OF THE HEARING. THE COURT MAY
37 ELECT TO CONDUCT THE HEARING AND THE PROSECUTING AGENCY MAY PRESENT EVIDENCE
38 AND ARGUMENT.

39 E. ~~Subsections C and~~ SUBSECTION D of this section ~~shall apply~~ APPLIES
40 only to inpatient treatment pursuant to section 36-540, subsection A,
41 paragraphs 2 and 3.

1 F. The patient shall be informed of the patient's right to consult an
2 attorney by the person or court to whom the patient makes the request for
3 release at the time the patient makes the request and, in the case of
4 confinement in an agency, by the reviewing court within one day of its
5 receipt of notice from the medical director of the agency where the patient
6 is being treated. The patient shall be permitted to consult an attorney to
7 assist in preparation of a petition for the writ of habeas corpus and to
8 represent the patient in the hearing. If the patient is not represented by
9 an attorney, the reviewing court, within two days of its notice to the
10 patient of the patient's right to counsel, shall appoint an attorney to
11 assist the patient in the preparation of a petition and to represent the
12 patient in the hearing.

13 G. The medical director of the mental health treatment agency, at
14 least twenty-four hours before the hearing, shall provide the patient's
15 attorney with a copy of the patient's medical records.

16 H. The patient's attorney shall fulfill all of the following minimal
17 duties:

18 1. Within twenty-four hours of appointment, conduct an interview with
19 the patient.

20 2. At least twenty-four hours before the hearing, interview the
21 patient's treatment physician or psychiatric and mental health nurse
22 practitioner if available.

23 3. Before the hearing, examine the clinical record of the patient.

24 4. Before the hearing, examine the patient's court records as to the
25 patient's involuntary treatment.

26 I. An attorney who does not fulfill the duties prescribed by
27 subsection H of this section is subject to contempt of court.

28 Sec. 27. Section 36-3701, Arizona Revised Statutes, is amended to
29 read:

30 36-3701. Definitions

31 In this article, unless the context otherwise requires:

32 1. "Agency" means any agency that is authorized to direct the release
33 of a person who is serving a sentence or term of confinement or who is
34 receiving treatment, including a state or federal prison, a county jail and
35 the Arizona state hospital **OR OTHER MENTAL HEALTH TREATMENT AGENCY**.

36 2. "Competent professional" means a person who is:

37 (a) Familiar with the state's sexually violent persons statutes and
38 sexual offender treatment programs available in this state.

39 (b) Approved by the superior court as meeting court approved
40 guidelines.

41 3. "Conviction" includes a finding of guilt at any time for a sexually
42 violent offense or an order of the juvenile court adjudicating the person
43 delinquent for any sexually violent offense.

1 4. "Less restrictive alternative" means court ordered treatment in a
2 setting that is less restrictive than total confinement and that is conducted
3 in a setting approved by the superintendent of the state hospital.

4 5. "Mental disorder" means a paraphilia, personality disorder or
5 conduct disorder or any combination of paraphilia, personality disorder and
6 conduct disorder that predisposes a person to commit sexual acts to such a
7 degree as to render the person a danger to the health and safety of others.

8 6. "Sexually violent offense" means any of the following:

9 (a) Indecent exposure to a person who is under fifteen years of age
10 pursuant to section 13-1402, public sexual indecency to a minor pursuant to
11 section 13-1403, sexual conduct with a minor pursuant to section 13-1405,
12 sexual assault pursuant to section 13-1406, molestation of a child pursuant
13 to section 13-1410, continuous sexual abuse of a child pursuant to section
14 13-1417 or sexual assault of a spouse if the offense was committed before
15 August 12, 2005.

16 (b) Second degree murder pursuant to section 13-1104, first degree
17 murder pursuant to section 13-1105, assault pursuant to section 13-1203,
18 aggravated assault pursuant to section 13-1204, unlawful imprisonment
19 pursuant to section 13-1303, kidnapping pursuant to section 13-1304 or
20 burglary in the first degree pursuant to section 13-1508 if the court at the
21 time of sentencing or civil commitment proceedings determines beyond a
22 reasonable doubt that the act was sexually motivated pursuant to section
23 13-118.

24 (c) An attempt, a solicitation, a facilitation or a conspiracy to
25 commit an offense listed in subdivision (a) or (b) of this paragraph.

26 (d) An act committed in another jurisdiction that if committed in this
27 state would be a sexually violent offense listed in subdivision (a), (b) or
28 (c) of this paragraph.

29 (e) A conviction for a felony offense that was in effect before
30 September 1, 1978 and that if committed on or after September 1, 1978 would
31 be comparable to a sexually violent offense listed in subdivision (a) or (b)
32 of this paragraph.

33 7. "Sexually violent person" means a person to whom both of the
34 following apply:

35 (a) Has ever been convicted of or found guilty but insane of a
36 sexually violent offense or was charged with a sexually violent offense and
37 was determined incompetent to stand trial.

38 (b) Has a mental disorder that makes the person likely to engage in
39 acts of sexual violence.

40 Sec. 28. Effective date

41 The following sections are effective from and after June 30, 2016:

42 1. Section 36-520, Arizona Revised Statutes, as amended by Laws 2015,
43 chapter 195, section 26 and this act.

44 2. Section 36-522, Arizona Revised Statutes, as amended by Laws 2015,
45 chapter 195, section 28 and this act.

- 1 3. Section 36-523, Arizona Revised Statutes, as amended by Laws 2015,
2 chapter 195, section 29 and this act.
- 3 4. Section 36-531, Arizona Revised Statutes, as amended by Laws 2015,
4 chapter 195, section 30 and this act.
- 5 5. Section 36-541.01, Arizona Revised Statutes, as amended by Laws
6 2015, chapter 195, section 33 and this act.
- 7 6. Section 36-543, Arizona Revised Statutes, as amended by Laws 2015,
8 chapter 195, section 34 and this act.